Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

HEDCOR, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8931

Members:
CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

OCT 0 3 2017
10:15 a.m.

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DECISION

CASANOVA, *J.*:

This is a Petition for Review[1], filed on November 21, 2014, by petitioner-Hedcor, Inc. against respondent Commissioner of Internal Revenue (CIR), seeking the refund or issuance of tax credit certificate (TCC) of its unutilized input value-added tax (VAT) in the amount of Six Million Seven Hundred Forty Seven Thousand Seven Hundred Fifty Five Pesos and Thirty Eight Centavos (P6,747,755.38) arising from its purchases of goods and services mainly attributable to its zero-rated sales of electricity for the second quarter of taxable year 2012.

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at 214 Ambuklao Road, Obulan, Beckel, La Trinidad, Benguet. It may be served orders and notices, resolutions, and other processes of this Court through its counsel at Suite 309, JP Rizal Cor. Cardona St., Makati City. 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

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[1] Docket (Vol. I), pp. 7-17.

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.[2] It is registered with Bureau of Internal Revenue (BIR) as VAT taxpayer with Taxpayer Identification Number (TIN) 001-946-873 and with Certificate of Registration Number OCN 4RC0000670842 dated May 2, 1990.[3]

Respondent CIR is the duly appointed Chief of the Bureau of Internal Revenue (BIR). Respondent 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. He may be served with summons, pleadings and other processes at his office at BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

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

Certificate of Compliance (COC) No.	**Power Plant/Location**	**Date of COC**
13-11-GN 329-20028L[5]	Ampohaw Hydroelectric Power Plant Benengbeng, Sablan, Benguet	11-Nov-13
13-11-GN 331-20030L[6]	Bineng1 Hydroelectric Power Plant Bineng, La Trinidad, Benguet	11-Nov-13
13-11-GN 332-20031L[7]	Bineng2 Hydroelectric Power Plant Bineng, La Trinidad, Benguet	11-Nov-13
13-11-GN 333-20032L[8]	Bineng2b Hydroelectric Power Plant Bineng, La Trinidad, Benguet	11-Nov-13
13-11-GN 334-20033L[9]	Bineng3 Hydroelectric Power Plant Bineng, La Trinidad, Benguet	11-Nov-13
13-11-GN 327-20026L[10]	FLS Hydroelectric Power Plant Poblacion, Bakun, Benguet	11-Nov-13
12-04-GN 268-19259L[11]	Irisan 1 HEPP Brgy. Tadiangan, Tuba Benguet	30-Apr-12

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[2] Exhibit "P-1".
[3] Summary of Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI) Docket (Vol. I), p. 226; Exhibit "P-15".
[4] Summary of Stipulated Facts, JSFI, Docket (Vol. I), p. 226.
[5] Exhibit "P-3".
[6] Exhibit "P-4".
[7] Exhibit "P-5".
[8] Exhibit "P-6".
[9] Exhibit "P-7".
[10] Exhibit "P-8".
[11] Exhibit "P-9".

13-11-GN 330-20029L[12]	Irisan 3 Hydroelectric Power Plant Tadiangan, Tuba, Benguet	11-Nov-13
13-11-GN 336-20035L[13]	Sal-angan Hydroelectric Power Plant Ampucao, Itogon, Benguet	11-Nov-13
13-11-GN 335-20034L[14]	Lower Labay Hydroelectric Power Plant Ampusongan, Bakun, Benguet	11-Nov-13
13-11-GN 328-20027L[15]	Lon-oy Hydroelectric Power Plant Poblacion, Bakun, Benguet	11-Nov-13
11-05-GXT 286b-0331M[16]	Talomo Hydroelectric Power Plant Calinan; Mintal Proper; Upper Mintal and Cataluñan, Pequeño, Davao City	May 9, 2011

Petitioner filed with the BIR its original and amended quarterly VAT returns for the second quarter of 2012 on July 20, 2012 and January 31, 2013.[17] 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 P6,747,755.38. VAT returns for quarters covering the period form 3rd quarter of 2012 until the 1st quarter of 2013 show that it did not carry over the said excess and unused input VAT.[18]

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 (BIR Form No. 1914), with an attached cover letter dated June 2, 2014.[19] 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 (RMO) No. 53-98 to substantiate its claim.[20]

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 the Court of Tax Appeals (CTA) on November 21, 2014.

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[12] Exhibit "P-10".
[13] Exhibit "P-11".
[14] Exhibit "P-12".
[15] Exhibit "P-13".
[16] Exhibit "P-14".
[17] Exhibit "P-16".
[18] Exhibit "P-17", "P-18", "P-19", "P-20".
[19] Exhibit "P-21 and "P-22".
[20] Exhibit "P-23".

On February 4, 2015, respondent filed his Answer[21], interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her *(sic)* Special and Affirmative Defenses.

5. The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered.[22]

6. Since taxes are what we pay for a civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority.[23]

7. Tax refunds partake the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State such that he who claims a refund or exemption must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[24]

8. Accordingly, it is incumbent upon petitioner to establish its right to refund and that it is indubitably entitled thereto; and failure to sustain such burden is fatal for this claim of refund.

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[21] Docket (Vol. I), pp. 121-126.

[22] Commissioner of Internal Revenue v. Eastern Telecommunications Phils., G.R. No. 163835, 7 July 2010.

[23] Atlas Consolidated Mining and Dev't Corp. v. Commissioner of Internal Revenue, G.R. No. 159471, 26 January 2011.

[24] Gulf Air Co., Phil. Branch v. Commissioner of Internal Revenue, G.R. No. 182045, 19 September 2012.

9. Likewise, not only should petitioner establish that it is entitled to the tax credit; it is also imperative for petitioner to prove its compliance with the following:

a. The registration requirements of a VAT taxpayer in compliance with Revenue Regulations 7-2012 in relation to Section 236(A), (B), (C) and (D) of the National Internal Revenue Code (Tax Code);
b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code;
c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT credit pursuant to Revenue Memorandum Order No. 53-1998 and Revenue Memorandum Circular No. 54-2014, otherwise there would be no sufficient compliance with the filing of an administrative application for tax credit which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the NIRC. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petitioner *[sic]* for review;
d. That the Input VAT in the amount of P6,747,755.38 allegedly incurred by petitioner for the second quarter of taxable year 2012 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;
e. That petitioner's administrative and judicial claims for tax credit of the unutilized Input VAT

was filed within the periods provided in Sections 112 (A) and (C) of the NIRC; and

f. That petitioner's purchases of capital goods and domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the NIRC and pursuant to Section 4.110-7 of the Revenue Regulations No. 14-2005;

10. It has been uniformly and consistently ruled by the Honorable Supreme Court that the taxpayer bears the burden of establishing the factual and legal basis of its claim for tax credit. In the case at hand, petitioner failed to present clear and convincing evidence to merit a tax credit.

11. The case of the Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation[25] emphatically pointed out that:

> 'Time and again, we have held that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. **Upon the person claiming an exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed not be allowed solely on the ground of equity.** These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemption must be strictly construed against the taxpayer, as taxes are lifeblood of the government. (Emphasis supplied).

[25] G.R. No. 188497, 25 April 2012

12. Following the premise above, petitioner has the burden of proving that the right to such tax credit indubitably exist and a well-founded doubt is fatal to its claim.

13. Finally, it must be stressed that taxes paid and collected are presumed to have been made in accordance with the laws and regulations.

14. As here, the amount being claimed by petitioner for allegedly unutilized Input VAT for the second quarter of taxable year 2012 was not properly documented.

15. Accordingly, without proper documentation showing 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, Pre-Trial Conference[26] was scheduled on March 19, 2015. Respondent's Pre-Trial Brief[27] was filed on March 10, 2015 while Pre-Trial Brief[28] for Petitioner was filed on March 13, 2015.

On March 30, 2015, the parties filed their Joint Stipulation of Facts and Issues[29] which was approved by the Court in its Pre-Trial Order[30] 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[31], offering Exhibits "P-1" to "P-1510".

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[26] Notice of Pre-Trial Conference, Docket (Vol. I), p. 128.
[27] Docket (Vol. I), pp. 129-133.
[28] Docket (Vol. I), pp. 134-140.
[29] Docket (Vol. I), pp. 225-228.
[30] Docket (Vol. I), pp. 230-233.
[31] Docket (Vol. I), pp. 282-292.

In the Resolution[32] dated January 21, 2015, the Court admitted Exhibits "P-3" to "P-1510" and denied Exhibits "P-1", "P-2", "P-22" and "P-1500".

Thus, petitioner filed its Motion for Partial Reconsideration of Resolution dated January 21, 2016[33], praying for the Court to reconsider the above-mentioned Resolution and, to re-open the presentation of petitioner's evidence. In a Resolution promulgated on April 5, 2016, the Court set the hearing for the marking of petitioner's evidence and held in abeyance the resolution of petitioner's Motion for Partial Reconsideration of Resolution dated January 21, 2016.

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 reconsidered the admission of Exhibits "P-1" and "P-22", per Resolution[34] dated June 22, 2016 and per Minutes of the Hearing dated September 5, 2016.

Petitioner filed its Memorandum[35] on October 20, 2016, while respondent filed his Manifestation[36] 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, the case was submitted for decision on October 24, 2016.[37]

The parties submitted this lone issue[38] for the Court's resolution:

> Whether petitioner is entitled to a refund or issuance of tax credit certificate in the total amount of P6,747,755.38, representing its unutilized input VAT from its purchases of goods and services attributable to its zero-rated sales of electricity for the second quarter of taxable year 2012.

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[32] Docket (Vol. I), pp. 338-339.
[33] Docket (Vol. I), pp. 340-343.
[34] Docket (Vol. II), pp. 462-469 and 490, respectively.
[35] Docket (Vol. II), pp. 502-516.
[36] Docket (Vol. II), pp. 1939-1965.
[37] Resolution dated February 5, 2016, Docket (Vol. II), p. 1967.
[38] JSFI, Docket (Vol. I), p. 226.

It must be noted that in order to be entitled to a refund or issuance of tax credit certificate of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be met:

1. That the taxpayer is VAT-registered;
2. That the claim for refund was filed within the prescriptive period;
3. That there must be zero-rated or effectively zero-rated sales;
4. That input taxes were incurred or paid;
5. That such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. That the input taxes were not applied against any output VAT liability.

It is undisputed that petitioner is registered with the BIR as a VAT taxpayer with TIN 001-946-873 as evidenced by its Certificate of Registration Number OCN 4RC0000670842 dated May 2, 1990.

Sections 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, respectively provide as follows:

> **"SEC. 112.** ***Refunds or Tax Credits of Input Tax.-***
>
> (A) *Zero-rated or Effectively Zero-rated Sales.-* Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales:

> *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.-* In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Pursuant to the above-quoted provisions, the administrative claim for the issuance of TCC or refund of input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero rated sales were made. Thus, since petitioner's last day for the filing of its administrative claim for the second quarter of taxable year 2012 was on June 30, 2014, evidently, petitioner's administrative claim for refund[39] was timely filed on June 26, 2014.

As regards the timeliness of petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, provides that the CIR has 120 days from the date of submission of the complete documents in support of the application for refund or tax credit certificate within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period, the CIR fails to act on the application for tax

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[39] Exhibits "P-21" to "P-23".

refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the CTA within 30 days.

Based on Revenue Memorandum Circular (RMC) No. 54-2014, which took effect on June 21, 2014, the 120-day period shall be reckoned from the date the administrative claim was filed. The taxpayer-claimant is required to submit complete supporting documents at the time of filing of the application for refund/credit.

In the case of ***Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue***,[40] the Supreme Court discussed the provisions of RMC No. 54-2014 in this wise:

> "It bears mentioning at this point that the foregoing summation of the rules *should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014*, such as the claim at bench. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:
>
>> The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>>
>> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall

[40] G.R. No. 207112, December 8, 2015.

be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/ claimant.

Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim."

Considering that the administrative claim of the petitioner was filed after June 11, 2014, the rules under RMC No. 54-2014 shall apply. Consequently, respondent has 120 days from June 26, 2014, or until October 24, 2014 to decide on petitioner's claim.

Records show that respondent did not act on petitioner's claim on or before October 24, 2014. Hence, petitioner has 30 days from the expiration of the 120-day period to decide, or until November 23, 2014 to file an appeal before the CTA. Thus, petitioner's Petition for Review was timely filed on November 21, 2014.

Petitioner contends that its sales of electricity generated through hydropower, for the second quarter of 2012 are subject to zero percent VAT, pursuant to Section 108(B)(7) of the NIRC of 1997, as amended, which provides:

"SEC. 108. ***Value-added Tax on Sale of Services and Use or Lease of Properties.*** –

xxx xxx xxx

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

xxx xxx xxx

(7) 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 energy sources using technologies such as fuel cells and hydrogen fuels."

Moreover, Section 4.108-5 (b)(7) of Revenue Regulations (RR) No. 16-2005, which implements the above-quoted provision, qualifies the applicability of such zero-rating as follows:

"**SECTION 4.108-5.** ***Zero-Rated Sale of Services.*** –

xxx xxx xxx

(b) ***Transactions Subject to Zero Percent (0%) VAT Rate.—*** The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:

xxx xxx xxx

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; *Provided, however,* that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power."

Corollary to the above provisions, Section 4.108-3 (f) of RR No. 16-2005 states:

"SECTION 4.108-3. Definitions and Sepcific Rules on Selected Services. –

Xxx xxx xxx

(f) Sales 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 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".

As mentioned above, petitioner 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.[41] Moreover, petitioner is a generation company with various certificates of compliance issued by the ERC.

For these reasons, petitioner's sales of power generated through hydropower qualify for VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended.

Petitioner is engaged in zero-rated sales for its sales of electricity generated through hydropower. Likewise, petitioner's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities, as well as the whole process of exploring and developing renewable energy sources up to its conversion into power are also zero-rated, pursuant to Section 15(g) of Republic Act (RA) No. 9513 or the Renewable

[41] Amended Articles of Incorporation, Exhibit "P-1".

Energy Act of 2008, which was approved on December 16, 2008, to wit:

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

The same was implemented by Part III, Rule 5, Section 13(G)(b) and (c) of DOE Circular No. DC2009-05-0008 issued by the Department of Energy (DOE) on May 25, 2009, which provides as follows:

"PART III.
INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES

RULE 5.
GENERAL INCENTIVES AND PRIVILEGES FOR RENEWABLE ENERGY DEVELOPMENT

SEC. 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:

xxx xxx xxx

G. Zero Percent Value-Added Tax Rate

The following transactions/activities 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:

xxx xxx xxx

(b) Purchase of local goods, properties and services **needed for the development, construction, and installation of the plant facilities** of RE Developers; and

(c) **Whole process of exploration and development of RE sources up to its conversion into power,** including, but not limited to, the services performed by subcontractors and/or contractors." *(Emphasis supplied)*

It is clear from the foregoing that petitioner, being a renewable energy (RE) developer, is entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plants facilities, and 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 its subcontractors and/or contractors.

As such, no output VAT shall be shifted to or passed on to RE developers, such as herein petitioner, in connection with their purchases of goods and services needed for the development, construction, and installation of their plant facilities as well as to the whole process of exploration and development of RE sources up to its conversion into power. Conversely, no input VAT shall be paid by RE developers on these transactions. There being no input VAT to be paid by RE developers, it necessarily follows that they are not entitled to refund, or issuance of TCC from the said purchases.

Simply stated, petitioner should not have paid input taxes on its purchases of goods and services from VAT-registered suppliers because such purchases were zero-rated, that is, no output tax was paid by the suppliers. Accordingly, no input tax should have been shifted or passed on to petitioner. The VAT is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services.[42]

The present case is analogous to the case of ***Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue***,[43] wherein the CTA *En Banc*, affirming the decision of the Court in Division, ruled that an entity located within the Ecozone cannot seek from the BIR a refund of its unutilized input taxes because under the law and the Cross Border Doctrine of the VAT system, sales of goods and services to PEZA-registered entities such as Coral Bay Nickel Corporation, are subject to zero percent (0%) VAT. The Court *En Banc* further held that in instances when petitioner Coral Bay paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent rate, Coral Bay's recourse is not against the government, but against the seller who shifted to it the output VAT. Pertinent portions of the Decision read:

> "xxx, all sales of goods or property to PEZA-registered enterprises made by VAT registered suppliers from the customs territory shall be subject to 0% VAT, pursuant to *Sec. 106(A)(2)(a)(5), of the NIRC, of 1997, as amended*, in relation to *Article 77(2) of the Omnibus Investments Code*. While all sales of services to PEZA-

[42] Section 105, NIRC of 1997, as amended.
[43] CTA EB Case No. 403 (CTA Case No. 7022), May 29, 2009.

registered enterprises, made by VAT registered suppliers from the customs territory, shall be subject to 0% VAT, pursuant to *Section 108(8)(3) of the NIRC of 1997, as amended*, in relation to the provisions of *RA 7916* and the 'Cross Border Doctrine' of the VAT system.

xxx xxx xxx

The Cross Border Doctrine provides that no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority (*Section 2, Revenue Memorandum Circular No. 74-99*).

Since, an ECOZONE is regarded as a foreign territory by RA 7916, the sales of goods and services therefore by VAT registered enterprises to PEZA-registered enterprises are subject to VAT at zero percent rate. Accordingly, no output VAT shall be shifted to or passed on to PEZA-registered enterprises; conversely, no input VAT shall be paid by PEZA-registered enterprises from said purchases. There being no input VAT paid by PEZA-registered enterprises, it necessarily follows that they are not entitled to refund, or issuance of tax credit certificate from their purchases of goods and services.

Records show that petitioner is a PEZA registered entity, as evidenced by its PEZA Certificate of Registration No. 02-072 (*Exhibit 'C'*). Applying the foregoing doctrine, petitioner is therefore subject to VAT at zero percent rate. Accordingly, no output VAT shall be shifted to it; hence, petitioner is not entitled to refund or issuance of tax credit certificate from its domestic purchases of goods and services.

It bears stressing that in the aforecited *Toshiba case*, the Supreme Court, citing *Revenue Memorandum Circular No. 42-03*, categorically stated that 'for invoices/receipts issued upon the effectivity of RMC No. 74-99, the claims for input VAT by PEZA-registered companies, regardless of the type or class of PEZA-registration; should be denied'. Since petitioner's claim for refund or issuance of tax credit certificate pertains to input VAT on its domestic purchases of goods and services for the period May 1, 2002 to December 31, 2002 (*Exhibits 'W-1' to W-241*), which is after the effectivity of *Revenue Memorandum Circular No. 74-99*, petitioner is therefore not entitled to refund, pursuant to the *Toshiba case* and *Revenue Memorandum Circular No. 42-03*.

To allow petitioner a refund or issuance of tax credit certificate of input VAT on its domestic purchases of goods and services, when there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich petitioner at the expense of the government. Under the law, no one shall unjustly enrich himself at the expense of another. *'Niguno non deue enriquecerse tortizamente condano de otr' (Ong Yong, et al. vs. David S. Tiu, et al., 375 SCRA 640)*. Said ruling is equally true in the field of taxation, particularly in cases involving claims for refunds.

In instances when petitioner paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent rate, petitioner's recourse is not against the government, but against the seller who shifted to it the output VAT. *Revenue Memorandum Circular No. 42-03* is clearly instructive on this matter:

> '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.'

Pursuant to *Revenue Memorandum Circular No. 42-03*, petitioner's recourse for those purchases of goods and services where it paid VAT is not a claim for refund against the government, or the issuance of a tax credit certificate; but to seek reimbursement of the input VAT paid from its suppliers of goods and services."

The aforequoted ruling was affirmed by the Supreme Court in the case of ***Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue, G.R. No. 190506,*** on June 13, 2016 holding that the proper party to seek the tax refund or credit should be the suppliers, not the petitioner (Coral Bay), as follows:

> "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. 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."

The most recent CTA case of ***CBK Power Company Limited vs. Commissioner of Internal Revenue***,[44] also discussed how a generation company whose sales are zero rated and the purchases of its local supply of goods, properties and services are likewise zero-rated, therefore, should not be entitled to a refund. The dispositive portion states:

> "In the same vein, petitioner's recourse for its purchases of goods and services where it paid VAT is not a claim for refund against the BIR, but to seek reimbursement of its alleged input VAT paid from its suppliers of goods and services since its purchases of local goods, properties and services needed for the development, construction and installation of the plant facilities as well as its purchases of goods, properties and services for the whole process of exploration and development of renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors or contractors, are subject to zero percent VAT under RA No. 9513.
>
> In view of the foregoing, the Court rules that petitioner is not entitled to the issuance of TCC for unutilized input VAT in the amount of P58,802,851.18, allegedly representing its unutilized input taxes paid on its local purchases and/or importation of goods and services, capital goods and payments for services rendered by non-residents, which were all attributable to its zero-rated sales for the period of January 1, 2007 to December 31, 2007."

Since petitioner's purchases of local goods, properties and services needed for the development, construction and installation of the plant facilities as well as its purchases of goods, properties and services for the whole process of exploration and development of

[44] CTA Case No. 7887, June 6, 2017.

renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors or contractors, are subject to zero percent (0%) VAT under RA No. 9513, petitioner's recourse is not a claim for refund from the BIR but to seek reimbursement of its alleged input VAT paid from its suppliers of goods and services.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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