Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

CE LUZON GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 591
(CTA Case No. 7558)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CE LUZON GEOTHERMAL POWER COMPANY, INC.,
Respondent.

CTA EB NO. 628
(CTA Case No. 7558)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:
JUN 28 2017 3:50 p.m.

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AMENDED DECISION

MINDARO-GRULLA, J.:

This is a remanded case[1] involving the claim for refund allegedly representing unutilized excess input taxes attributable to zero-rated sales for the four taxable quarters of calendar year 2005 of CE Luzon Geothermal Power Company, Inc. Initially, the claim for refund case was dismissed by this Court en banc for having been prematurely filed, but it was subsequently remanded for resolution on the merits.

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[1] CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue, G.R. No. 200841-42, August 26, 2015. Letter of Transmittal dated August 8, 2016 was received by the Clerk of Court of this Court on November 24, 2016. On December 9. 2016, the case was forwarded to the ponente.

The facts of the case, as narrated in our Decision dated October 4, 2011 remains undisputed, to wit:

> *"Submitted for decision are two (2) consolidated Petitions for Review before the Court En Banc, separately filed by the respective parties on February 24, 2010 and May 12, 2010 under Section 2(a)(1), Rule 4, in relation to Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, of the Decision and Amended Decision dated June 24, 2009 and January 19, 2010, respectively, rendered by the former Second Division of this Court.*
>
> *CE Luzon Geothermal Power Company, Inc. ("CE Luzon ") prays for the Court en banc to reverse and to set aside the Amended Decision dated January 19, 2010 insofar as the Court a quo disallowed the unutilized input VAT in the amount of P3,268,066.40; and to issue a Decision granting in full its claim for refund or issuance of a TCC for its unutilized input VAT for the four (4) quarters of CY 2005 in the total amount of P20,546,004.87.*
>
> *On the other hand, the Commissioner of Internal Revenue ("CIR") prays for the Court en banc to reverse and to set aside the Amended Decision dated January 19, 2010 and Resolution dated April 22, 2010 and to issue another Decision denying CE Luzon's entire claim for refund.*
>
> *The antecedent facts as culled from the Decision of the Court a quo dated June 24, 2009, are as follows:*
>
> *'THE PARTIES*
>
> *Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at the 24th Floor, 6750 Ayala Avenue, Makati City.*
>
> *Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He may be served with summons, pleadings and other legal processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.*

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THE FACTS

The antecedent facts of the case are as follows:

Petitioner is engaged in the business of power generation for which it was accredited and certified to as such by the Department of Energy, as evidenced by its DOE Certificate of Accreditation (OSAC9 4- 12) issued on June 15, 1994 (Exhibit "B"). Petitioner is a registered value added tax (VAT) taxpayer with the Bureau of Internal Revenue evidenced by its Certificate of Registration with Tax Identification Number 003-924-356-000 (Exhibit "C ").

On the following dates, petitioner filed with the BIR its Original Quarterly VAT Returns for the first to fourth quarters of 2005, respectively:

Taxable Quarter	***Date of Filing of Original Return***
1st	*April 25,2005*
2nd	*July 25, 2005*
3rd	*October 25, 2005*
4th	*January 25, 2006*

On the following dates, petitioner filed with the BIR its Amended Quarterly VAT Returns for the first to fourth quarters of 2005, reflecting excess or unutilized VAT credits arising from petitioner's domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods:

2005 Taxable Quarter	***Date of Filing Amended Return***	***Excess/ Unutilized Input VAT Credits***				***Total (P)***
		Domestic Purchases of Goods other than Capital Goods (P)	***Domestic Purchases of Services (P)***	***Services Rendered By Non-Residents (P)***	***Importation other than Capital Goods (P)***	
1st	*January 12, 2006*	*534,507.06*	*5,957,152.09*	*460,519.69*	*176,684*	*7,128,862.84*
2nd	*January 12, 2006*	*1,213,592.81*	*2,179,539.80*	*30,471.40*	*319,222*	*3,742,826.01*
3rd	*January 12, 2006*	*1,091,122.97*	*2,690,938.31*	*0.00*	*1,306,800*	*5,088,861.28*
4th	*April 10, 2006*	*3,805,118.65*	*2,514,421.72*	*337,660.21*	*767,477*	*4,585,454.74*
Total			*13,342,051.92*	*828,651.30*	*2,570,183*	*20,546,004.87*

On November 30, 2006, petitioner filed its administrative claim for refund of unutilized input VAT for the four quarters of taxable year 2005.

In view of respondent's inaction, on January 3, 2007, petitioner filed its judicial claim for refund with this Court, docketed as C.T.A. Case No. 7558.

In his Answer, respondent alleged by way of special and affirmative defenses:

'4. Petitioner's claim for refund is subject to administrative investigation/examination by the Bureau;

5. The amount of P20,546,004.87 being claimed by petitioner as alleged unutilized input VAT from its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters of taxable year 2005 was not properly documented;

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund /credit;

7. To support its claim, it is imperative for petitioner to prove, the following, viz:

a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);

b. The invoicing and accounting requirements for VAT registered persons, as well as the filing and payments of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise, there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, 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 judicial remedies

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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 petition for review;

d. That the input taxes of P20,546,004.87 allegedly paid by the petitioner on its purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters of 2005 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) of the NIRC of 1997;

f. That petitioner's 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 of 1997, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims of Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7- 95 (Re: Persons who can avail of the Input Tax Credits);

8. The petition for review is premature. Since petitioner did not submit complete documents in support of its administrative claim for refund as indicated under Section 112 (D) of the NIRC of 1997, the 120-day period starts to run on 30 November 2006, the date when it filed its administrative claim for refund. The said period is yet to expire on 10 March 2007. Hence, the 30- day period within which to file the petition for review before this Honorable Court is yet to expire on 9 April 2007. This being so, this Honorable Court has no jurisdiction to act on the instant petition for review.

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption *from taxation (Commissioner of Internal Revenue vs. Ledesma, 3 1 SCRA 95) and such, they were looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 12 11).*

xxx xxx xxx"

On June 24, 2009, the Former Second Division of this Court rendered a Decision partially granting CE Luzon's claim for unutilized input VAT refund/credit in the reduced amount of P14,879,312.65 for the four (4) quarters of calendar year 2005. In partially granting the petition, the Court a quo held CE Luzon sufficiently complied with the requisites under Sections 110(B) and 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, the dispositive portion of which reads:

> *"**WHEREFORE**, premises considered, the present Petition for Review is **PARTLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **FOURTEEN MILLION EIGHT HUNDRED SEVENTY NINE THOUSAND THREE HUNDRED TWELVE AND 65/100 (P14,879,312.65),** representing unutilized input VAT paid on its domestic purchases of non-capital goods and services rendered by non-residents and importation of non-capital goods which are attributable to zero rated sales for calendar year 2005.*
>
> *SO ORDERED."*

Both parties filed their Motions for Partial Reconsideration dated July 14, 2009 and July 16, 2009, respectively.

In an Amended Decision dated January 19, 2010, the Former Second Division of this Court denied for lack of merit CIR's Motion for Partial Reconsideration; while CE Luzon's Motion for Partial Reconsideration was partly granted insofar as it has sufficiently proven its entitlement to additional input VAT in the amount of P2,398,625.82. The dispositive portion of the said Amended Decision reads:

> *"**WHEREFORE**, premises considered:*

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(I) As regards petitioner CE Luzon Geothermal Power Company, Inc.'s "Motion for Partial Reconsideration"- the same is hereby ***PARTLY GRANTED.*** *Accordingly, the dispositive portion of our Decision dated June 24, 2009 is hereby* ***AMENDED*** *to read, as follows:*

*"****WHEREFORE****, premises considered, the present Petition for Review is* ***PARTLY GRANTED****. Accordingly, respondent is hereby* ***ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE*** *in favor of petitioner the reduced amount of* ***SEVENTEEN MILLION TWO HUNDRED SEVENTY SEVEN THOUSAND NINE HUNDRED THIRTY EIGHT and 47/100 PESOS (P17,277,938.47)****, representing unutilized input VAT paid on its domestic purchases of goods and services which are attributable to zero-rated sales for calendar year 2005.*

SO ORDERED.*';* and

2) As regards respondent Commissioner of Internal Revenue's "Motion for Partial Reconsideration" the same is hereby ***DENIED*** *for lack of merit.*

SO ORDERED *."*

Undaunted, CIR filed a Motion for Partial Reconsideration of the aforesaid Amended Decision; while CE Luzon filed a Petition for Review before the Court En Banc. In a Resolution dated April 22, 2010, the Court a quo denied CIR's Motion for Partial Reconsideration for lack of merit. Thereafter, CIR filed a Petition for Review before the Court En Banc.

Hence, these consolidated Petitions for Review.

CE Luzon submits the issues, as follows:

1. *The CTA-Division erred when it failed to consider in evidence petitioner's documents supporting input VAT on payments to non-resident suppliers of services;*

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> 2. *The CTA-Division erred when it failed to consider in evidence the certified true copies of the official receipts and invoices issued by petitioner's suppliers;*
>
> 3. *The CTA-Division erred when it ruled that some of petitioner's official receipts and invoices supporting its unutilized input VAT did not comply with the invoicing requirements of the National Internal Revenue Code of 1997 (the "Tax Code"). The CTA-Division failed to appreciate the legal ramifications of Intel relative to the rules on substantiation of input VAT;*
>
> 4. *The CTA-Division erred when it failed to consider that respondent was deemed to have waived or abandoned any objection with respect to the alleged failure of petitioner's supporting documents to comply with invoicing requirements. Respondent failed to raise such issue during trial;*
>
> 5. *The CTA-Division erred when it increased the burden of proof in civil cases from a mere preponderance of evidence to a much higher standard.*
>
> *On the other hand, the CIR proffers the sole issue, which states:*
>
> *The Former Second Division erred in granting respondent's claim for refund in the reduced amount of P17,277,938.47 allegedly representing unutilized input VAT paid on its domestic purchases of non-capital goods and services rendered by non-residents and importation of non-capital goods which are attributable to zero-rated sales for calendar year 2005 because respondent has not sufficiently proved its entitlement to refund and that the claim was not filed in accordance with the procedure prescribed by law."*

From the foregoing, it remains that the principal issue is whether CE Luzon is entitled to its claim for refund/credit in the amount of P20,546,004.87, representing unutilized input VAT paid on its domestic purchases of non-capital goods and services rendered by non-residents and importation of non-capital goods which are attributable to zero-rated sales for calendar year 2005.

We resolve.

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The relevant provisions of law pertaining to the claim for refund of input tax of a power generation company are Section 4 (x), Section 6 of Republic Act (RA) No. 9136, also known as the Electric Power Industry Reform Act of 2001 (EPIRA) and Section 4, Rule 5 of the Rules and Regulations to Implement RA No. 9136, which provides that sales of generated power by generation companies are VAT zero-rated. It also provides that "Generation Company' refers to any person or entity authorized by the ERC (Energy Regulatory Commission) to operate facilities used in the generation of electricity. Otherwise stated "Generation Company" who are qualified for VAT (Value Added Tax) zero-rating refers to any person or entity who had secured and approved Certificate of Compliance from the ERC pursuant to EPIRA law; to wit:

Sections 4(x) and 6 of Republic Act (RA) No. 9136, also known as the Electric Power Industry Reform Act of 2001 (EPIRA) provides:

> *"SEC. 4. Definition of Terms. —*
>
> *xxx xxx xxx.*
>
> *(x) 'Generation Company' refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;"*
>
> *"SEC. 6. Generation Sector. — xxx.*
>
> *xxx, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws. xxx.*
>
> *Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated. xxx.*

Section 4, Rule 5 of the Rules and Regulations to Implement RA No. 9136, EPIRA law, provides:

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"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 profile 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."

On the other hand, Sections 108 (B)(7) in relation to 112 (A) and (C) of the National Internal Revenue Code (NIRC) of 1997, provides the requirements for the issuance of a tax credit certificate or refund of input tax due or paid attributable to the taxpayer's zero-rated sales or effectively zero-rated sales, to wit:

Section 108 (B) (7) of the NIRC of 1997, as amended provides:

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

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(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:

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(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."

Section 112 (A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

"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 non-zero-rated sales.

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(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

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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."

Accordingly, a taxpayer may claim a refund or tax credit certificate for input taxes paid on purchases of goods and services attributable to zero-rated sales upon compliance with the following requisites:

1. the taxpayer-claimant must be VAT-registered;

2. there must be zero-rated or effectively zero-rated sales;

3. input taxes were incurred or paid;

4. such input taxes are attributable to zero-rated or effectively zero-rated sales;

5. said input taxes were not applied against any output VAT liability; and

6. the claim was filed within the prescriptive period.

As to the first requisite, taxpayer CE Luzon Geothermal Power Company, Inc. ("CE Luzon") was able to prove that it is a registered VAT taxpayer with the Bureau of Internal Revenue as evidenced by its Certificate of Registration with Tax Identification Number 003-924-356-000[2].

As to the second requisite, CE Luzon failed to comply. Pursuant to the EPIRA law and its implementing rules[3], there is a need for a company to secure a Certificate of Compliance (COC) from the ERC in order to be registered as generation company and be able to engage in the generation of electricity. Once considered as a generation company

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[2] Exhibit "C", Division Docket p. 376.
[3] Section 4 (x), Section 6 of Republic Act (RA) No. 9136, also known as the Electric Power Industry Reform Act of 2001 (EPIRA) and Section 4, Rule 5 of the Rules and Regulations to Implement RA No. 9136.

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under the EPIRA law, the sales of generated power by such generation company shall be VAT zero-rated.

In the case *Commissioner of Internal Revenue vs. Toledo Power Company*[4], the Supreme Court pointed out the importance of the COC from the ERC to a generation company before it can qualify for VAT zero-rating and claim for refund. The Supreme Court instructively ruled as follows:

> *"Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4(x) of the same law states that a generation company "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Corollarily, to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation.*
>
> *In this case, TPC failed to present a COC from the ERC during the trial. On partial reconsideration, TPC argued that there was no need for it to present a COC because the parties already stipulated in the JSFI that TPC is a generation company and that it became entitled to the rights under the EPIRA when it filed its application with the ERC on June 20, 2002.*
>
> *We find the arguments raised by TPC unavailing.*
>
> *There is nothing in the JSFI to show that the parties agreed that TPC is a generation company under the EPIRA. The pertinent portions of the JSFI read:*
>
> *<u>JOINTLY STIPULATED FACTS</u>*
>
> > *1. [TPC] is principally engaged in the business of power generation and subsequent sale thereof to the [NPC, CEBECO, ACMDC, and AFC].*
> >
> > *2. On 20 June 2002, petitioner filed an application with the Energy Regulatory Commission (ERC) for the issuance of a Certificate of Compliance pursuant to the Implementing Rules and Regulations of the EPIRA.*

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[4] G.R. Nos. 196415 and 195451, December 2, 2015.

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ADMITTED FACTS

xxx xxx xxx.

> *3. Effective 26 June 2001, sales of generated power by generation companies became VAT zero-rated by virtue of Section 4(x) in relation to Section 6 of the EPIRA and Rule 5, Section 6 of the Rules and Regulations to Implement the EPIRA.*

Obviously, the parties did not stipulate that TPC is a generation company. They only stipulated that TPC is engaged in the business of power generation and that it filed an application with the ERC on June 20, 2002. However, being engaged in the business of power generation does not make TPC a generation company under the EPIRA. Neither did TPC's filing of an application for COC with the ERC automatically entitle TPC to the rights of a generation company under the EPIRA.

At this point, a distinction must be made between a generation facility and a generation company. A generation facility is defined under the EPIRA Rules and Regulations as "a facility for the production of electricity." While a generation company, as previously mentioned, "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Based on the foregoing definitions, what differentiates a generation facility from a generation company is that the latter is authorized by the ERC to operate, as evidenced by a COC.

Under the EPIRA, all new generation companies and existing generation facilities are required to obtain a COC from the ERC. New generation companies must 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. Based on the documents submitted, the ERC will determine whether the applicant has complied with the standards and requirements for operating a generation company. If the applicant is found compliant, only then will the ERC issue a COC.

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, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 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, and AFC cannot qualify for VAT zero-rating under the EPIRA."*

Clearly, all new generation companies and existing generation facilities are required to obtain a COC from the ERC under the EPIRA law. Evidently, failure to present a COC before the Courts is fatal to a taxpayer's claim. In the present case CE Luzon did not present the COC from the ERC. Accordingly, the absence of the COC from the ERC, CE Luzon cannot qualify for VAT zero-rating under the EPIRA law. Having failed to qualify for VAT zero-rating under the EPIRA law, the court need not discuss the other requisites.

In sum, CE Luzon is not entitled to its claim for refund/credit allegedly representing unutilized input VAT paid on its domestic purchases of non-capital goods and services rendered by non-residents and importation of non-capital goods for calendar year 2005.

WHEREFORE, premises considered, the Petition for Review docketed as CTA EB No. 628 is **GRANTED**. Petition for Review docketed as CTA EB No. 591 is **DENIED** for lack of merit. The Decision and Amended Decision dated June 24, 2009 and January 19, 2010, respectively, in CTA Case No. 7558, rendered by the former Second Division of this Court are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Petition for Review docketed as CTA Case No. 7558 is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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