REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CBK POWER COMPANY LIMITED, Petitioner,	**CTA EB No. 1685** **(CTA Case No. 8784)**
-versus-	**Present:** Del Rosario, *P.J.,* Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 27 2019 2:37 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.:*

This resolves petitioner's Motion for Reconsideration filed on March 18, 2019. Petitioner moves and prays that this Court reconsider, reverse and set aside its judgment promulgated on February 20, 2019. Respondent filed his "Opposition (Re: Motion for Reconsideration)" on April 12, 2019. This motion was submitted for resolution on April 16, 2019.

The dispositive portion of the February 20, 2019 Decision states:

> **WHEREFORE,** premises considered, the Petition for Review filed by CBK Power Company Limited is **DENIED** for lack of merit. Accordingly, the February 23, 2017 Decision and the July 11, 2017 Resolution of the CTA Special First Division in CTA Case No. 8784 are **AFFIRMED.**
>
> **SO ORDERED.**

Petitioner's motion is based on the following grounds:[1]

a. The Honorable Court *En Banc* erred when it held that the "failure of the CIR to present any evidence or to refute the evidence presented by the taxpayer does not *ipso facto* entitle the taxpayer to a tax refund. The burden is on the taxpayer to prove its entitlement to the refund," and concluded that "in this case, CBK alleges, without showing proof, that it is not covered by RA No. 9513" BECAUSE THE BURDEN OF PROOF THAT PETITIONER CBK IS COVERED BY RA NO. 9513 RESTS UPON RESPONDENT CIR;

b. The Honorable Court *En Banc* erred when it held that "this is the first time that CBK raised this argument (*i.e., that it is not covered by RA No. 9513).* It is well-settled that matters that were neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal and are barred by estoppels" BECAUSE ON THE CONTRARY THE ALLEGED APPLICABILITY OF THE PROVISIONS OF REPUBLIC ACT (RA) NO. 9513, BIR REVENUE MEMORANDUM CIRCULAR (RMC) NO. 74-99, Q-3/A-3 OF BIR RMC NO. 42-2003, AND THE CORAL BAY CASE WAS FIRST INTRODUCED AND AVERED BY THE HONORABLE COURT OF TAX APPEALS' FIRST DIVISION IN THE ASSAILED DECISION AND RESOLUTION; and

c. The Honorable Court *En Banc* erred when it found that "the pertinent discussions as well as the dispositive portion in the assailed decision reflect the CTA Division's compliance with Section 14, Article VIII of the Constitution" BECAUSE ON THE CONTRARY THE HONORABLE COURT OF TAX APPEALS' FIRST DIVISION ERRED WHEN, IN THE ABSENCE OF ANY FACTUAL AND LEGAL BASIS AND CONTRARY TO THE *VERBA LEGIS* PRINCIPLE, APPLIED THE PROVISIONS OF REPUBLIC ACT (RA) NO. 9513, BIR REVENUE MEMORANDUM CIRCULAR (RMC) NO. 74-99, Q-3/A-3 OF BIR RMC NO. 42-2003, AND THE CORAL BAY CASE TO THE INSTANT *CASH REFUND/VAT REFUND CLAIM* AND RULED THAT PETITIONER IS NOT ENTITLED TO THE INPUT TAXES CLAIMED FOR VAT REFUND FOR TAXABLE YEAR 2012 ON THE GROUND THAT PETITIONER'S PURCHASES OF LOCAL SUPPLY OF GOODS, PROPERTIES AND SERVICES, IMPORTATION OF GOODS OTHER THAN CAPITAL

[1] *Rollo*, pp. 654-655; Citations, emphases, and underlines made by petitioner were omitted.

GOODS, AND PAYMENTS FOR SERVICES RENDERED BY NON-RESIDENTS ARE ZERO-RATED UNDER RA NO. 9513; EFFECTIVELY DEPRIVING PETITIONER OF PROPERTY WITHOUT DUE PROCESS OF LAW MANDATED UNDER SECTION 1, ARTICLE III, AND SECTION 14, ARTICLE VIII OF THE 1987 CONSTITUTION.

After a careful review of the grounds raised and arguments presented by petitioner, We find no valid or cogent reason to deviate from our findings and conclusions reached in our Decision dated February 20, 2019, thus, the motion is denied.

Considering the finding of the CTA Division that petitioner is an RE Developer, the CTA Division in resolving the case correctly applied the relevant law, *i.e.,* Republic Act No. 9513[2], even if not invoked by the parties. Moreover, the Coral Bay case, among others, was applied by analogy in this case.

This Court reiterates that the burden is on the taxpayer to prove its entitlement to the refund. Petitioner, however, failed to convince this Court that it is entitled to the cash refund/ VAT refund in the amount of ₱50,060,766.08, allegedly representing unutilized or excess creditable input taxes on petitioner's domestic purchases of goods other than capital goods, importations of goods other than capital goods, domestic purchases of services, payments for services rendered by non-residents, purchases of capital goods not exceeding ₱1 million, and purchase of capital goods exceeding ₱1 million, for the period January 1, 2012 to December 31, 2012, all attributable to zero-rated sales for the same period.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

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[2] *"AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES", known as* "Renewable Energy Act of 2008."

WE CONCUR:

(On Leave)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I maintain my Concurring and Dissenting Opinion dated February 20, 2019.)
CATHERINE T. MANAHAN
Associate Justice