REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MINDANAO II GEOTHERMAL PARTNERSHIP,	**CTA CASE NOS. 8082 & 8106**
Petitioner,	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 12 2018 4:25 pm

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RESOLUTION

CASANOVA, *J.*:

For resolution are respondent's **Motion for Reconsideration**, filed on August 25, 2017, with petitioner's **Comment [To Respondent CIR's Motion for Reconsideration]**, filed through registered mail on October 11, 2017; and petitioner's **Motion for Partial Reconsideration**, filed through registered mail on August 25, 2017 which the Court received on September 4, 2017, with respondent's **Comment (On Petitioner's Motion for Partial Reconsideration)**, filed on September 25, 2017.

Both parties seek reconsideration of the Court's Decision dated August 9, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** the amount of **₱220,700.89** in favor of petitioner,

representing the latter's unutilized input VAT attributable to its zero-rated sales for TY 2008.

SO ORDERED."

Respondent's Motion for Reconsideration

Respondent interposes the following grounds in his motion:

"I. The Honorable Court erred in ruling that petitioner is entitled to refund in the amount of ₱220,700.89 representing alleged unutilized input VAT for taxable year 2008; and

II. Petitioner is not the proper party to seek the refund."[1]

Respondent contends that petitioner is not entitled to refund for the alleged unutilized input VAT because the latter'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 zero-rated in accordance with Sections 106(A)(2)(c) and 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 15(g) of Republic Act (R.A.) No. 9513. As such, no output tax should be allegedly shifted to or passed on to Renewable Energy (RE) developers in connection with their purchases of goods and services needed for the development, construction, and installation of their plant facilities as well as the whole process of exploration and development of RE sources up to its conversion into power. Respondent claims that since RE developers have no input tax to be paid, the same are not entitled to a refund or issuance of tax credit certificate (TCC) from the said purchase. Respondent further avers that it is petitioner's suppliers who are the proper party to seek the refund and not the latter.

The Court finds respondent's arguments bereft of merit. The Court reiterates its ruling in the assailed Decision, to wit:

[1] Docket, (Vol. IV), pp. 1719-1720.

"As a power generation company utilizing geothermal energy, petitioner's sales of generated power and delivery of electric capacity and energy to the NPC for and in behalf of PNOC-EDC (pursuant to the BOT Contract) qualify for VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended by R.A. No. 9337, as implemented by Section 4.108-5(b)(7) of Revenue Regulations (RR) No. 16-2005, to wit:

'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.' (*Emphasis supplied*)

'SEC. 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.' *(Emphasis supplied)*

Corollary thereto is the provision of Section 4.108-3(f) of RR No. 16-2005, as amended by RR No. 4-2007, which states:

'SEC. 4.108-3. *Definitions and Specific Rules on Selected Services.* –

xxx xxx xxx

(f) **Sale of electricity by generation, transmission, and distribution companies** shall be subject to twelve percent (12%) on their gross receipts starting Feb. 1, 2006; 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 energy sources using technologies such as fuel cells and hydrogen fuels **shall be subject to 0% VAT**.

'G*eneration companies'* refer 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 RA No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities." *(Emphasis supplied)*

It is worthy to emphasize that in resolving petitioner's claim for refund of unutilized input VAT attributable to its zero-rated sales for taxable year 2008, the Court correctly applied the provisions of the NIRC of 1997, as amended by R.A. No. 9337, and not the provisions under R.A. No. 9513 as invoked by respondent in his motion for reconsideration. Notably, R.A. No. 9513 was approved only on December 16, 2008, and it took effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation. Clearly, the claimed unutilized input tax attributable to zero-rated sales for taxable 2008 is not yet covered by R.A. No. 9513; thus, the said law finds no application in this case.

Accordingly, the Court cannot sustain the arguments in respondent's Motion for Reconsideration.

Petitioner's Motion for Partial Reconsideration

Petitioner assails the Court's ruling in this case based on the following grounds:

> "I. The substantiation requirements for petitioner's claim have been substantially complied in that the official receipts are duly supported by invoices which clearly show or indicate the VAT as separate item;
>
> II. The substantiation requirements for petitioner's claim have been substantially complied in that the official receipts are duly supported by invoices which clearly show or indicate the TIN and/or address of petitioner;
>
> III. The substantiation requirements for petitioner's claim have been substantially complied in that the official receipts are duly supported by invoices which clearly show or indicate the TIN and/or address of petitioner and the VAT was indicated as a separate item;

IV. The substantiation requirements for petitioner's claim have been substantially complied in that petitioner submitted in evidence the official receipts where the VAT is clearly indicated;

V. The date stated in the official receipt is a typographical error and the substantiation requirements have been substantially complied in that the official receipt is duly supported by invoices which clearly show or indicate the VAT as a separate item;

VI. The doctrine *of strictissimi juris* should be relaxed when it is clear that the claim for tax refund or issuance of tax credit certificate has a clear legal basis and is sufficiently supported by evidence; and

VII. Technicalities and legalisms should not be used when it is clear that a taxpayer is entitled to a refund."[2]

In the assailed Decision, the Court disallowed a portion of petitioner's input VAT claim on the ground that the submitted supporting invoices and official receipts (ORs) failed to indicate either petitioner's TIN, address, VAT amount or a combination thereof, or they were dated outside the period of claim. Among the input VAT disallowances identified by the Court, petitioner seeks reconsideration on the following:

Supplier	**Inv/OR No.**	**Amount**	**Exhibit**
1. Purchases of goods/services supported by invoices/ORs but input VAT amount was not separately shown			
Jetour Philippines Inc	14775	₱ 8,104.93	P.1
Marubeni Energy Services Corp	0276	360,191.83	P.6
Plumas Transport Corporation	0577	300.00	P.7
House of Travel Inc	20773	643.00	P.10
Julieto Marco	2231	60.00	P.11
Marubeni Energy Services Corp	0278	274,702.36	P.12
Plumas Transport Corporation	0584	9,107.14	P.13
Amica Corporation	028	181,209.60	P.16
General Electric Philippines Inc	66455	23,357.14	P.21
Julieto Marco	2244	60.00	Q.4
Marubeni Energy Services Corp	0289	737,713.61	Q.18
Marubeni Energy Services Corp	0292	258,541.27	Q.19

[2] Docket, (Vol. IV), pp. 1728 to 1730.

Triple Eight Int'l Travel & Tours Inc	29528	1,358.00	Q.23
General Electric Philippines Inc	66604	23,357.14	Q.29
Mabuhay Vinyl Corporation	002356	11,615.73	Q.35
Marubeni Energy Services Corp	0298	378,432.51	Q.36
Marubeni Energy Services Corp	0289	128,055.79	Q.37
Aviatica Travel & Management Corporation	54423	1,519.00	R.1
General Electric Philippines Inc	66631	11,678.57	R.6
Marubeni Energy Services Corp	0300	275,642.09	R.16
General Electric Philippines Inc	66853	23,357.14	R.24
Aviatica Travel & Management Corporation	54553	625.00	R.35
Aviatica Travel & Management Corporation	54586	1,519.00	S.1
General Electric Philippines Inc	66866	11,678.57	S.6
General Electric Philippines Inc	66867	11,678.57	S.7
Plumas Transport Corporation	0645	3,600.00	S.14
Plumas Transport Corporation	1003	18,214.29	S.15
Marubeni Energy Services Corp	0314	394,458.49	S.31
Marubeni Energy Services Corp	0312	319,172.82	S.32
Prime Travel Tours Inc	16029	36.00	S.37
Julieto Marco	2326	5,400.00	S.49
Marubeni Energy Services Corp	0318	516,056.93	S.54
Tri-amp Corporation	1455	36,624.00	S.60
Tri-Ohms	1303	40,714.29	S.61
subtotal		**₱ 4,068,784.81**	
2. Purchases of goods/services supported by invoices/ORs without TIN and/or address of petitioner			
GH Office Depot	295788	₱ 211.61	R.7
The Amalgamated Trading Center	8058	1,580.36	R.20
Tomas Electrical Supply Corporation	179686	192.86	R.34
Cebu Power Exponents Services Inc	1633	9,604.80	S.3
Kupler Industries Inc	028743	1,003.56	S.10
Villanueva Caña & Associates	0671	317.28	R.43
Villanueva Caña & Associates	0687	54,600.00	S.19
Villanueva Caña & Associates	0710	12,000.00	S.20
Simplex Industrial Corporation	92409	534.64	S.39
W & L Trading Corporation	7956	3,114.86	S.40
Minerva Y. Chua	1016	24,192.00	S.55
SGV & CO	057582	18,000.00	S.58
Tomas Electrical Supply Corporation	185026	377.14	S.59
W & L Trading Corporation	8192	964.29	S.62
subtotal		**₱ 126,693.40**	
3. Purchases of goods/services supported by invoices/ORs without TIN and/or address of petitioner and input VAT amount was not separately shown			
Mabuhay Vinyl Corporation	2141	₱ 22,235.79	P.2
Mabuhay Vinyl Corporation	2140	11,227.01	P.3
Mabuhay Vinyl Corporation	2139	10,558.68	P.5
Jewealt Marketing	4476	192.86	P.22
Julieto Marco	2237	60.00	P.23
Marubeni Energy Services Corp	0281	254,758.51	P.26
Mabuhay Vinyl Corporation	2263	35,454.13	Q.5
Plumas Transport Corporation	0661	3,600.00	Q.6
Plumas Transport Corporation	0603	3,600.00	Q.7
Cifra Industrial Services Corp	1463	10,809.37	Q.11

Mabuhay Vinyl Corporation	2283	21,758.42	Q.15
Mabuhay Vinyl Corporation	2355	22,842.73	Q.16
Plumas Transport Corporation	0678	3,600.00	Q.20
Julieto Marco	2305	60.00	Q.31
Plumas Transport Corporation	0686	3,600.00	Q.38
Julieto Marco	2311	60.00	R.11
Mabuhay Vinyl Corporation	2441	11,636.19	R.13
Mabuhay Vinyl Corporation	2443	22,624.51	R.14
Mabuhay Vinyl Corporation	2472	23,531.52	R.15
Plumas Transport Corporation	0700	3,600.00	R.19
House of Travel Inc	22432	1,519.00	R.27A
Mabuhay Vinyl Corporation	2524	11,718.02	R.30
Mabuhay Vinyl Corporation	2525	22,651.79	R.31
Plumas Transport Corporation	0620	3,600.00	R.33
House of Travel Inc	22432	472.00	R.36
Mabuhay Vinyl Corporation	2585	22,486.75	R.37
Marubeni Energy Services Corp	0306	286,341.19	R.40
Plumas Transport Corporation	0631	3,600.00	R.41
Plumas Transport Corporation	0644	384.00	R.42
Cifra Industrial Services Corp	1535	10,087.50	S.22
Mabuhay Vinyl Corporation	2736	23,382.58	S.28
Mabuhay Vinyl Corporation	2706	23,203.63	S.29
Mindanao Electrical Services	9343	2,367.86	S.33
NCH Philippines Inc	2082	1,108.80	S.35
Plumas Transport Corporation	1019	11,797.14	S.36
Mabuhay Vinyl Corporation	2755	35,577.97	S.51
Plumas Transport Corporation	1032	9,107.14	S.56
subtotal		**₱ 935,215.09**	
4. Purchase of goods/services supported by documents other than VAT invoices/ORs			
Kidapawan Megacenter Corp	78199	₱ 216.84	P.24
Tokio Marine Malayan Insurance	14096	360,406.35	P.29
Mang Inasal	106	16.50	Q.17
Ayala Property Mgmt Corp	316477	2.68	Q.26
Somoutori	41559	28.93	Q.39
MOF Company (Subic) Inc	4029	960.00	S.34
Hyman's Bahay Kainan	372684	26.79	S.47
World Chicken	222847	18.75	S.63
subtotal		**₱ 361,676.84**	
5. Purchases of services supported by ORs dated outside the period of claim and input VAT amount was not separately shown			
Marubeni Energy Services	0305	₱ 307,308.77	R.32
Subtotal		**₱ 307,308.77**	
Total		**₱ 5,799,678.91**	

In its motion, petitioner insists that the substantiation requirements for the aforementioned input VAT have been substantially complied with.

The Court finds petitioner's motion bereft of merit.

Section 113(A) and (B) of the NIRC of 1997, as amended, provides for the invoicing requirements for VAT taxpayers and the information that should be contained therein, to wit:

> "SEC. 113. **Invoicing and Accounting Requirements for VAT-Registered Persons.-**
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall issue:
>
> (1) A **VAT invoice for every sale, barter or exchange of goods or properties**; and
>
> (2) A **VAT official receipt** for every lease of goods or properties, and **for every sale, barter or exchange of services.**
>
> (B) *Information contained in the VAT Invoice or VAT Official Receipt.* - **The following information shall be indicated in the VAT invoice or VAT official receipt**:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:
>
> (a) **The amount of tax shall be shown as a separate item in the invoice or receipt**;
>
> xxx xxx xxx
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, **address and Taxpayer Identification Number (TIN) of the purchaser**, customer or client." *(Emphasis supplied.)*

The aforestated provision explicitly requires that the sale of goods or properties must be supported by VAT invoice while the sale of services must be supported by VAT official receipt (OR). This is in consonance with Sections 106(A) and 108(B) of the same Code, which provide:

"SEC. 106. **Value-added Tax on Sale of Goods or Properties. -**

(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), xxx.

xxx xxx xxx

The term '*gross selling price*' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. xxx"

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

(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of the gross receipts, derived from the sale or exchange of services, including the use or lease of properties: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), xxx.

xxx xxx xxx

The term *'gross receipts'* means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with services and deposits and advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."

Based on the foregoing, the VAT on sale of goods or properties accrues upon the consummation of sale regardless of the receipt of consideration thereof; while the VAT on sale of services accrues upon actual or constructive receipt of consideration regardless of actual rendition of service. Thus, sales of goods or properties must be supported by an invoice, while sales of services must be supported by an official receipt.

In the case of *Commissioner of Internal Revenue vs. Manila Mining Corporation*[3], the Supreme Court had the occasion to define a sales or commercial invoice and a receipt, to wit:

"A 'sales or commercial invoice' is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.

A 'receipt' on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer."

[3] G.R. No. 153204, August 31, 2005.

In other words, the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (*proof of transaction*), and the best means to prove the input VAT payments (*proof of payment*). Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.[4]

Moreover, the abovequoted Section 113(B) of the NIRC of 1997, as amended, requires that the supporting invoice for sale of goods and the supporting OR for sale of services shall contain specific information, including the amount of VAT as a separate item, and the TIN and address of the VAT-registered purchaser, in cases of sales worth ₱1,000.00 or more.

In the instant case, petitioner asserts that it substantially complied with the substantiation requirements as it considers the invoices, bills or statement of accounts corresponding to the ORs as support for its purchases of services and the ORs corresponding to the invoices as support for its purchases of goods.

The Court does not agree with petitioner.

Neither the TIN, address or separate VAT amount contained in the invoices to corroborate the information in the ORs in support of purchases of services, nor the TIN, address or separate VAT amount contained in the ORs to corroborate the information in the invoices in support of purchases of goods can be regarded as sufficient compliance of the law. To emphasize, a VAT invoice and a VAT OR cannot be used interchangably as evidence to prove a particular transaction.

Furthermore, while some of the purchases of goods were supported by VAT invoices and some of the purchases of services were supported by VAT ORs, the said invoices or ORs do not specify either the TIN, address or separate VAT amount therein. Also, some

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4 *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010.

of the documents presented were tape receipts and NON-VAT ORs, which are non-compliant with the aforesated invoicing requirements.

Likewise, the alleged typographical error on the date of the transaction, which was considered dated outside the period of claim, does not hold water. If an error really existed, the same should have been corrected and countersigned by the issuer's authorized signatory at the outset. And even if it was dated within the period of claim, the input VAT thereon should be disallowed just the same since no separate VAT amount was indicated in its supporting OR.

To recapitulate, petitioner's purchases of services and goods must be supported by VAT ORs and VAT invoices, respectively, which must contain all the information required under Section 113(B) of the NIRC of 1997, as amended.

Considering that petitioner failed to properly substantiate its input VAT claim on purchases of goods and services by not indicating the required information to the VAT invoices and ORs, respectively, the disallowances found by the Court in the sssailed Decision shall remain.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[5] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entitity claiming the exemption.[6] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[7] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[8]

In *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*[9], the Supreme Court held that:

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[5] *Citibank, N.A. vs. Court of Appeals,* G.R. No. 107434, October 10, 1997.
[6] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.,* G.R. No. 127105, June 25, 1999.
[7] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179961, January 31, 2011.
[8] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.
[9] G.R. No. 180173, April 6, 2011.

"xxx. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund or credit, in this case VAT input tax, by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.

xxx xxx xxx

The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales."

Considering the foregoing, the Court finds no compelling reason to disturb the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** and petitioner's **Motion for Partial Reconsideration** are both **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice