REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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NORTH LUZON RENEWABLE ENERGY CORP., Petitioner,	**CTA Case No. 9886**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** FEB 19 2021 11:46 a.m.

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DECISION

UY, J.:

Before this Court is a *Petition for Review*[1] filed by North Luzon Renewable Energy Corporation (NLREC) against the Commissioner of Internal Revenue (CIR), praying for the refund of the additional amount of Eight Million Three Hundred Eighteen Thousand Four Hundred Fifty-Four Pesos and Twenty-Four Centavos (₱8,318,454.24), representing its accumulated input VAT attributable to zero-rated sales for the year 2016.

THE FACTS

Petitioner NLREC is a VAT-registered domestic corporation with Securities and Exchange Commissioner (SEC) Company Registration number CS200608482, and is engaged in the business of generation and distribution of energy from renewable sources, specifically through the operation of the 81MW Wind farm facility

[1] Docket – Vol. 1, pp. 10 to 34.

located at Barangay Caparispisan, Pagudpud, Ilocos Norte.[2] It is likewise registered as a Renewable Energy (RE) Developer with the Department of Energy (DOE) under DOE Certificate of Registration No. WESC-2009-09-005-A and WESC-2009-09-005 issued pursuant to Republic Act (RA) No. 9513, otherwise known as the "Renewable Energy Act of 2008".[3]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) principally charged with the implementation of tax laws and regulations, vested with the authority to grant a refund or, to issue a tax credit certificate for unutilized input VAT attributable to zero-rated sales.[4]

On March 26, 2018, petitioner filed an *Administrative Claim* for refund of its unutilized input VAT attributable to its zero-rated sales for taxable year 2016 in the total amount of ₱9,276,440.27.[5]

The BIR then issued the assailed *VAT Refund/Credit Notice* dated May 15, 2018,[6] granting petitioner's refund only to the extent of ₱957,986.03, and disallowed the amount of ₱8,318,454.24,[7] as follows:

A. Local Purchases	Amount
VAT Refund Claimed	₱ 8,994,524.22
Less: Disallowances	***(8,318,454.24)***
Net Allowable VAT Refund/Credit	₱ 676,069.98
B. Importations	Amount
VAT Refund Claimed	₱ 281,916.05
Less: Disallowances	(0.00)
Recommended Net Allowable VAT Refund/Credit	₱ 281,916.05
Total Allowable for VAT Refund/Credit (sum of A and B)	**₱ 957,986.03**

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[2] Paragraph (Par.) 2, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 4, p. 1893.
[3] Par. 3, Admitted Facts, JSFI, Docket – Vol. 4, p. 1893.
[4] Par. 1, Admitted Facts, JSFI, Docket – Vol. 4, p. 1893.
[5] Par. 4, Admitted Facts, JSFI, Docket – Vol. 4, p. 1894.
[6] Par. 5, Admitted Facts, JSFI, Docket – Vol. 4, p. 1894.
[7] Par. 20, *Petition for Review*, Docket – Vol. 1, p. 16, vis-à-vis Par. 1, *Answer*, Docket – Vol. 2, p. 966; Exhibit "R-5," BIR Records, p. 558.

Petitioner received the said *VAT Refund/Credit Notice* on June 25, 2018.[8]

Thereafter, on June 27, 2018, petitioner filed with respondent the letter evenly dated,[9] to clarify its entitlement to the full refund requested.[10]

The instant *Petition for Review* was filed on July 25, 2018.[11]

Respondent filed his *Answer* on August 29, 2018,[12] interposing the following defenses, to wit: (1) petitioner is not the proper party to claim for any input VAT refund on its purchases; (2) the disallowance in the amount of ₱8,318,454.24 is proper; and (3) claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and [as] such, they are looked upon with disfavor.

The Pre-Trial Conference was set and held on December 4, 2018.[13] Prior thereto, on September 10, 2018, *Respondent's Pre-Trial Brief* was filed,[14] while on November 26, 2018, the *Pre-Trial Brief for the Petitioner* was submitted.[15]

On October 29, 2018, petitioner filed a *Motion to Admit (attached Comment dated 29 October 2018)*,[16] praying that the attached *Comment (Re: Answer dated August 29, 2018)*[17] be noted and made part of the records of this case. In the Resolution dated November 8, 2018,[18] the said *Motion to Admit* was granted by the Court, and the said *Comment* was noted and admitted as part of the record of the case.

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[8] Exhibit "R-5," BIR Records, p. 558.
[9] Exhibit "P-5", Docket – Vol. 5, pp. 2181 to 2185.
[10] One of the purposes for offering Exhibit "P-5", petitioner's *Formal Offer of Evidence*, Docket – Vol. 5, at pp. 2155 to 2156.
[11] Docket – Vol. 1, pp. 10 to 34.
[12] Docket – Vol. 2, pp. 966 to 976.
[13] *Notice of Pre-Trial Conference* dated September 4, 2018, Docket – Vol. 2, pp. 983 to 984; Minutes of the hearing held on, and Order dated, December 4, 2018, Docket – Vol. 4, pp. 1884, and 1887 to 1889, respectively.
[14] Docket – Vol. 2, pp. 985 to 989.
[15] Docket – Vol. 4, pp. 1871 to 1884.
[16] Docket – Vol. 3, pp. 1000 to 1004.
[17] Docket – Vol. 3, pp. 1005 to 1014.
[18] Docket – Vol. 3, p. 1016.

The parties filed their *Joint Stipulation of Facts and Issue* (JSFI) on December 28, 2018,[19] which was admitted and approved on January 7, 2019.[20] On January 17, 2019, the Pre-Trial Order was issued,[21] and the Pre-Trial was deemed terminated.

During trial, petitioner presented the following witnesses: (1) Atty. Joanne Melanie P. Trinidad-Gemanil,[22] petitioner's Chief Legal and Compliance Officer and Corporate Secretary; and (2) Maclen S. Araojo,[23] the Accounting Officer and Accounting Manager of petitioner.

On August 20, 2019, *Formal Offer of Evidence (For: Petitioner)* was filed,[24] to which respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on August 27, 2019.[25] In the Resolution dated September 26, 2019,[26] the Court admitted all of petitioner's exhibits.

For his part, respondent proffered the testimony of Revenue Officer Leni Grace A. Nodora,[27] and filed his *Formal Offer of Evidence*[28] on December 5, 2019. On December 12, 2019, petitioner filed its *Comment/Opposition (Re: Respondent's Formal Offer of Evidence).*[29] In the Resolution dated January 14, 2020, all of respondent's evidence were admitted, and the parties were ordered to file their respective memoranda within thirty (30) days from receipt thereof.[30]

With the filing of respondent's *Memorandum*[31] on February 14, 2020, and petitioner's *Memorandum*[32] on February 28, 2020, the case was submitted for decision on March 9, 2020.[33]

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[19] Docket – Vol. 4, pp. 1893 to 1898.
[20] Docket – Vol. 4, p. 1900.
[21] Docket – Vol. 5, pp. 1902 to 1907.
[22] Exhibit "P-17", Docket – Vol. 5, pp. 1914 to 1919; Minutes of the hearing held on, and Order dated, April 4, 2019, Docket – Vol. 5, pp. 2143 to 2144.
[23] Exhibit "P-18", Docket – Vol. 5, pp. 1934 to 1945; Minutes of the hearing held on, and Order dated, August 8, 2019, Docket – Vol. 5, p. 2151 to 2153.
[24] Docket – Vol. 5, pp. 2154 to 2163.
[25] Docket – Vol. 5, pp. 2372 to 2375.
[26] Docket – Vol. 5, pp. 2379 to 2381.
[27] Exhibit "R-6," Docket – Vol. 2, pp. 996 to 999; Minutes of the hearing held on, and Order dated December 3, 2019, Docket – Vol. 5, pp. 2387 to 2388.
[28] Docket – Vol. 5, pp. 2389 to 2392.
[29] Docket – Vol. 5, pp. 2395 to 2399.
[30] Docket – Vol. 5, pp. 2403 to 2404.
[31] Docket – Vol. 5, pp. 2405 to 2414.
[32] Docket – Vol. 5, pp. 2416 to 2439.
[33] Resolution dated March 9, 2020, Docket – Vol. 5, p. 2441.

Hence, this Decision.

THE ISSUE

The parties presented this sole issue[34] for resolution, to wit:

> "Whether or not petitioner, as an RE Developer, is entitled to a refund of its unutilized accumulated input VAT attributable to zero-rated sales for the taxable year 2016, in the total amount of **EIGHT MILLION THREE HUNDRED EIGHTEEN THOUSAND FOUR HUNDRED FIFTY-FOUR PESOS AND TWENTY-FOUR CENTAVOS (Php8,318,454.24)**."

Petitioner's arguments:

Petitioner argues that respondent violated its right to due process when he failed to put in writing the facts and the law on which the denial of its input VAT refund was based.

Likewise, petitioner contends that respondent erred in partially disallowing petitioner's claim for refund on unutilized input VAT, because as an RE Developer, petitioner is entitled to a refund of accumulated input VAT attributable to its zero-rated sales.

Respondent's counter-arguments:

Respondent contends that petitioner is not the proper party to claim for any input VAT refund on its purchases.

In addition, respondent avers that the disallowance in the amount of ₱8,318,454.24 is proper.

Finally, respondent maintains that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

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[34] Joint Statement of Issues to be Tried or Resolved, JSFI, Docket (Vol. 1), p. 1894.

THE COURT'S RULING

The instant *Petition for Review* lacks merit.

Respondent failed to state the legal and factual basis for the denial of petitioner's claim for input VAT refund.

Petitioner contends that respondent violated its right to due process when he failed to put in writing the facts and the law on which the denial of its input VAT refund was based.

We are convinced.

Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as last amended by Republic Act (RA) No. 10963,[35] provides, in part, as follows:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** —
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> xxx xxx xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That **should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.**
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> xxx xxx xxx."

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[35] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

Based on the foregoing provision, in claims for input VAT under the same provision, should respondent find that the grant of refund is not proper, said respondent must state in writing the legal and factual basis for the denial. This provision is consistent with one of the fundamental requirements of due process that must be respected in administrative proceedings, *i.e.*, that the administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.[36] Thus, the purpose of the same provision is that the taxpayer-applicant should not be left unaware on how the BIR or respondent appreciated the input VAT refund application, together with the submitted supporting documents.

A perusal of the subject *VAT Refund/Credit Notice* dated May 15, 2018 signed by OIC-ACIR Teresita M. Dizon[37] would indeed reveal that there is no statement of the legal and factual basis for the denial of the amount of ₱8,318,454.24, and falls short of the requirement set forth in Section 112 (c) of the NIRC, as amended.

Notwithstanding the foregoing failure to state the factual and legal basis for the denial of petitioner's claim for refund, however, petitioner is not automatically entitled to its claim.

It is well-settled that when a judicial claim for refund or tax credit in this Court is an appeal of an unsuccessful administrative claim, the taxpayer has to convince this Court that respondent had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show this Court that not only is he/she/it entitled under substantive law to his claim for refund or tax credit, but also that he/she/it satisfied all the documentary and evidentiary requirement for an administrative claim.[38] Moreover, the CTA being a court of record, the cases filed before it are litigated de novo and party litigants should prove every minute aspect of its case.[39] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[40] Thereafter, the question of whether the evidence submitted by a party is sufficient to

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[36] Refer to *Ang Tibay vs. The Court of Industrial Relations, et al.*, 62 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].
[37] Exhibit "R-5," BIR Records, p. 558.
[38] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.
[39] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[40] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[41]

In other words, there are two (2) matters which must be proved before this Court, upon appeal of an unsuccessful administrative claim, to wit: *first*, the taxpayer's entitlement to the claim for refund or tax credit under substantive law, and *second*, all documentary and evidentiary requirements for an administrative claim were satisfied at the BIR level. The *first* matter to be proved entails a determination of petitioner's compliance with the requisites established by law; while the *second* matter involves a review or determination whether respondent has basis in fact and/or in law of his denial of the administrative claim. Thus, the task of this Court is to determine, in the main, whether petitioner sufficiently satisfied these two (2) matters.

Requisites for the refund of input VAT established by law.

Section 112 of the NIRC of 1997, as amended, provides, in part, as follows:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax. —***
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> *(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 of properties or services, and the amount of creditable input tax due or

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[41] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, supra.*

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> 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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> xxx xxx xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: xxx xxx xxx.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Based on the foregoing provision, certain requisites must be complied with by the taxpayer-applicant in order to successfully obtain a credit/refund of input VAT. The said requisites may be classified into certain categories, to wit:

As to the timeliness of the filing of the administrative and judicial claims:

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[42]
2. in case of full or partial denial of the refund claim, the judicial claim is filed with this Court, within thirty (30) days from receipt of the decision;

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[42] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.

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<u>*With reference to the taxpayer's registration with the BIR:*</u>

3. the taxpayer is a VAT-registered person;[43]

<u>*In relation to the taxpayer's output VAT:*</u>

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[44]
5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[45]

<u>*As regards the taxpayer's input VAT being refunded:*</u>

6. the input taxes are not transitional input taxes;[46]
7. the input taxes are due or paid;[47]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[48] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[49]

It must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[50] Thus, relative to the above-stated *first* matter

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[43] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

[49] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

[50] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

to be proved by petitioner, it behooves petitioner to show compliance with each of the said requisites.

Petitioner's administrative and judicial claims were timely filed.

To repeat, the *first* requisite pertains to the filing of the refund claim for tax credit or refund of input VAT before the BIR, within two (2) years from the close of the quarter when the sales were made.

Counting two (2) years from the close of the four (4) quarters of taxable year 2016, the respective last day for the filing of the administrative claim therefor is shown below:

Period (2015)	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**
January 1, 2016 to March 31, 2016	March 31, 2016	March 31, 2018
April 1, 2016 to June 30, 2016	June 30, 2016	June 30, 2018
July 1, 2016 to September 30, 2016	September 30, 2016	September 30, 2018
October 1, 2016 to December 31, 2016	December 31, 2016	December 31, 2018

Considering that petitioner's administrative claim covering the said four (4) quarters for the above-stated periods was filed on March 26, 2018,[51] the same was timely made, and thus, petitioner fulfilled the *first* requisite.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision.

Respondent issued the *VAT Refund/Credit Notice* on May 15, 2018, and was received by petitioner on June 25, 2018.[52]

Considering that petitioner filed the instant *Petition for Review* on July 25, 2018,[53] the same was likewise timely made.

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[51] Par. 4, Admitted Facts, JSFI, Docket – Vol. 4, p. 1894.
[52] Par. 19, *Petition for Review*, Docket – Vol. 1, p. 16, vis-à-vis Par. 1, *Answer*, Docket – Vol. 2, p. 966; Exhibit "R-5," BIR Records, p. 558.
[53] Docket – Vol. 1, pp. 10 to 34.

Such being the case, petitioner fulfilled the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered person.

It is undisputed that petitioner is a VAT registered domestic corporation[54] and thus, is compliant with the *third* requisite.

Petitioner failed to prove that its sales qualify for VAT zero-rating.

The *fourth* requisite requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales.

It is undisputed that petitioner is an RE Developer registered with the DOE under DOE Certificate of Registration No. WESC-2009-09-005-A and WESC-2009-09-005 issued pursuant to RA No. 9513.[55] It then invokes Section 15(g) of the Renewable Energy Act of 2008; Section 13(G)(a), Rule 5, Implementing Rules and Regulations for the Renewable Energy Act of 2008 issued by the DOE; Section 108(B)(7) of the NIRC and Revenue Regulations (RR) No. 13-2018.

Indeed, Section 15(g) of the Renewable Energy Act of 2008[56], grants certain tax incentives to RE developers, such as petitioner. Said provision reads, in part, as follows:

> "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:

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[54] Par. 2, Admitted Facts, JSFI, Docket – Vol. 4, p. 1893.
[55] Par. 3, Admitted Facts, JSFI, Docket – Vol. 4, p. 1893.
[56] RA No. 9513. ^{MG}

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(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), <u>pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337</u>.**

xxx xxx xxx." *(Emphases and underscoring added)*

Relative thereto, Section 108(B)(7) of the NIRC of 1997, as amended by RA No. 9337, provides as follows:

"**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." *(Emphases added)*

Based on the foregoing provisions, the sale of power generated from or through renewable sources of energy, such as wind, is subject to the VAT rate of zero percent (0%).

To implement the foregoing provision, Section 4.108-3(f) of RR No. 16-2005 provides as follows:

"**SEC. 4.108-3.** <u>**Definitions and Specifics Rules on Selected Services.**</u> –

xxx xxx xxx

(f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10%[57] 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 energy sources using technologies such as fuel cells and hydrogen fuels **shall be subject to 0% VAT.**

***<u>'Generation companies'</u>* refers to persons or entities authorized by the Energy Regulatory Commissioner (ERC) to operate facilities used in the generation of electricity. For this purpose, <u>generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA No. 9136 (EPIRA)</u>.** They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.

xxx xxx xxx." *(Emphases and underscoring added)*

Thus, on the basis of the foregoing, while the sale of power through renewable sources of energy by a generation company is subject to the zero percent (0%) VAT, the latter must be authorized by the ERC to operate facilities used in the generation of electricity, in accordance with the EPIRA (or RA No. 9136).

In turn, Section 6 of the EPIRA (or RA No. 9136) provides, in part, as follows:

"**SEC. 6. *Generation Sector*.** – Generation of electric power, a business affected with public interest, shall be competitive and open.

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[57] Now at 12%. Refer to Memorandum dated January 31, 2006 from the Executive Secretary, as circulated in Revenue Memorandum Circular No. 7-2006.

[initials]

Upon the effectivity of this Act, **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 xxx xxx." *(Emphasis added)*

Based on the foregoing provision, before a generation company operates, it must first secure a certificate of compliance (COC) with the ERC.

Anent the securing of a COC from the ERC, the following guiding principles must be observed, to wit:

<u>Section 1, Rule 5, of the Rules and Regulations To Implement RA No. 9136</u>:

"*Section 1.* ***Guiding Principle.***

Pursuant to Section 6 of the Act, generation of electric power, a business affected with public interest, shall be competitive and open to all qualified Generation Companies. Generation shall not be considered a public utility operation. For this purpose, any Person engaged or intending to engage in Generation of Electricity shall not be required to secure a national franchise.

No Person may engage in the Generation of Electricity as a new Generation Company <u>unless such Person has received a COC from the ERC</u> to operate facilities used in the Generation of Electricity. A Person that demonstrates compliance with the standards and requirements of this Rule 5, and such other terms and conditions as determined by the ERC to be appropriate to ensure that Persons comply with all applicable legal and regulatory requirements, shall be issued a COC." *(Emphasis and underscoring added)*

<u>Section 2 (iii) of 2014 Revised Rules For the Issuance of Certificates of Compliance (COCs) For Generation Companies, Qualified End-Users and Entities With Self-Generation Facilities</u>:

"Section 2. **Guiding Principle.**

xxx xxx xxx

iii. **A COC shall be secured from the ERC <u>before the actual Commercial Operations</u> of the Generation Facility/ies. For new Generation Facilities, the Generation Company may conduct Test and Commissioning for a maximum period of two (2) months even without a COC and the sale of the generated output during Commissioning shall <u>not</u> be considered as transactions made during Commercial Operations.** Beyond this period, however, the sale of generated output shall already be deemed as transactions made during Commercial Operations for which a COC shall be required. xxx." *(Emphases ours)*

On the basis thereof, it is clear that no person may engaged in the generation of electricity as a new generation company unless such person has received a COC from the ERC to operate facilities used in the generation of electricity. Moreover, the same COC must be secured from the ERC *before* the actual commercial operations of the concerned generation facility. The new generation company is allowed to conduct test and commissioning for a maximum period of two (2) months even without the required COC, and the sale of the generated output during the said commissioning shall not be considered as transactions made during commercial operations. However, beyond the said two-month period, the sale of generated output shall already be deemed as transactions made during commercial operations by the generation company for which a COC from the ERC is required.

To summarize, the essential elements for the grant of VAT zero-rating under Section 15 (g) of the Renewable Energy Act of 2008 or RA No. 9513 vis-à-vis the above-quoted provisions of laws and regulations, are as follows:

1) The seller is an RE Developer of renewable energy facilities;
2) It sells fuel or power generated from renewable sources of energy, such as wind;

3) The said seller is a *"generation company"*, *i.e.*, a person or entity authorized by the ERC to operate facilities used in the generation of electricity; and
4) Such authority is embodied in a COC issued by the ERC which must be secured before the actual commercial operations of the generation facility.

In this case, as for the *first* and *second* essential elements, petitioner has fulfilled the same, in view of a showing that it is *"an RE Developer of 54 MW Caparispisan Wind Energy Project in Pagudpud, Ilocos Norte, under R.A. 9513 or Renewable Energy Act of 2008"*, as evidenced by the Certificate of Registration No. 2011-128 dated June 21, 2011 issued by the Board of Investments (BOI) in petitioner's favor.[58] However, as for the *third* and *fourth* essential elements, petitioner failed to present its COC issued by the ERC, which was secured before the actual commercial operations of the generation facility. Hence, petitioner's sales cannot be considered zero-rated under Section 108(B)(7) of the NIRC of 1997, as amended.

Moreover, Part III, Rule 5, Section 13.G, of the Implementing Rules and Regulations (IRR) of RA No. 9513[59] provides:

"**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:

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[58] Exhibit "P-2," Docket – Vol. 5, p. 2164.
[59] Department Circular No. DC2009-05-0008 dated May 25, 2009 issued by the Department of Energy (DOE).

(a) **Sale of fuel from RE sources 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;

xxx xxx xxx" (*Emphasis ours*)

However, the same Part III, Rule 5 of the Implementing Rules and Regulations of RA 9513 further states the conditions for the availment of incentives and other privileges under the said law. Section 18(A), (B), and (C) thereof reads:

"**SEC. 18. *Conditions for Availment of Incentives and Other Privileges.***

A. Registration/Accreditation with the DOE

<u>For purposes of entitlement to the incentives and privileges under the Act</u>, <u>existing and new RE Developers</u>, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall register with the DOE, through the Renewable Energy Management Bureau (REMB)**. The following certifications shall be issued:

(1) ***DOE Certificate of Registration*–issued to an RE Developer holding a valid RE Service/Operating Contract.**

For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule13, Section 39.

The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.

Any investment added to existing RE projects shall be subject to prior approval by the DOE.

[handwritten initials]

> *(2)* ***DOE Certificate of Accreditation***–issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.

B. Registration with the Board of Investments (BOI)

The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, <u>RE Developers</u> and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favourably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

C. *Certificate of Endorsement by the DOE*

<u>RE Developers</u>, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.

The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; *Provided,* That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.

xxx xxx xxx." *(Emphasis ours)*

NO

Thus, in order to qualify for VAT zero-rating as contemplated under RA No. 9513 and its Implementing Rules and Regulations, **RE Developers** must have secured the following:

1.) DOE *Certificateof Registration*;
2.) Registration with the BOI; and
3.) Certificate of Endorsement by the DOE.

The foregoing documents must all be shown. Otherwise, the transaction cannot be treated as subject to VAT zero-rating under the law.

In this case, while it may be undisputed that the DOE has issued the *Certificate of Registration* No. WESC-2009-09-005-A and WESC-2009-09-005,[60] and the BOI has issued *Certificate of Registration* No. 2011-128 dated June 21, 2011,[61] both in favor of petitioner, there is no showing that it has been issued a *Certificate of Endorsement* by the DOE. Thus, petitioner's sales indeed could not qualify for VAT zero-rating.

With the foregoing disquisitions, it is clear that petitioner failed to fulfill the *fourth* requisite for the successful prosecution of the instant refund claim. Thus, the instant refund claim must already be denied. Correspondingly, it becomes unnecessary to determine whether petitioner fulfilled the remaining requisites for granting the refund of the subject amount of ₱8,318,454.24.

In fine, petitioner failed to prove compliance with the requisites established by law—the *first* matter that must be proved before this Court, upon appeal of an unsuccessful administrative claim, as earlier pointed out. As a corollary to the *second* matter, also as earlier stated, *i.e.*, relative to the determination of whether respondent has basis in fact and/or law of the partial denial of the subject administrative claim, suffice it to state that petitioner has not shown the contrary.

It bears stressing that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on

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[60] Par. 3, Admitted Facts, JSFI, Docket – Vol. 4, p. 1893.
[61] Exhibit "P-2", Docket – Vol. 5, p. 2164.

the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed. [62]

Simply put, statues that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[63] In other words, a claim for unutilized input VAT is in the nature of a tax exemption. Thus, strict adherence to the conditions prescribed by the law is required of the taxpayer.[64]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[62] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.
[63] *Panasonic Communications Imaging Corp. of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.
[64] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.

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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd 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