REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

AIR DRILLING ASSOCIATES PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10399

Members:
BACORRO-VILLENA, *Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
MAY 2 7 2024 3:09 pm

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RESOLUTION

CUI-DAVID, J.:

On January 4, 2024, the Court promulgated a Decision, the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Air Drilling Associates Pte. Ltd. the reduced amount of **₱1,271,664.34**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the 1st Quarter of taxable year 2018.
>
> **SO ORDERED.**

Unconvinced, respondent filed the instant *Motion for Partial Reconsideration* (*Motion*) through registered mail on January 25, 2024, and received by the Court on January 31, 2024, asking the Court to revisit and reconsider the foregoing Decision on the following grounds:

I. THE RESPONDENT MAINTAINS THAT THE PETITIONER MUST ALSO FULFILL THE PRESCRIBED REQUIREMENTS UNDER SECTION 18 (A), (B), AND (C), RULE 5, PART III OF THE IMPLEMENTING RULES OF

RA 9513 TO QUALIFY FOR VAT ZERO-RATING, WHICH THE PETITIONER FAILED TO COMPLY.

II. PERUSAL OF THE CONTRACT BETWEEN THE EDC AND PETITIONER (EXHIBIT "P-12") REVEALS NO CONNECTION TO "AERATED DRILLING SERVICES NIGBU SITE PACKAGE #1" OR TO THE PETITIONER'S VAT OFFICIAL RECEIPTS NO. 0619 DATED MARCH 21, 2018 (EXHIBIT P-80), NO. 0617 DATED FEBRUARY 01, 2018 (EXHIBIT "P-81") AND NO. 0618 DATED FEBRUARY 22, 2018 (EXHIBIT "P-82").

Respondent claims that to avail of the VAT zero-rating incentive under Section 15(g) of Republic Act (RA) No. 9513, an RE Developer must have secured and presented the following documents as prescribed under Section 18 (A), (B), and (C), Rule 5, Part III of the implementing rules and regulations (IRR) of RA No. 9513, to wit: (i) Department of Energy (DOE) Certificate of Registration; (ii) Certificate of Registration with the Board of Investments (BOI); and (iii) Certificate of Endorsement by the DOE.

According to respondent, the sub-contractor of the RE Developer must submit the latter's DOE Certificate of Registration, BOI Certificate of Registration, and Certificate of Endorsement by the DOE to enjoy the VAT zero-rating under Section 15(g) of RA No. 9513. Respondent argues that the failure to require the subcontractor to submit the said documents would put them in a better position than their principal. Further, respondent claims that any condition imposed on the RE Developer to qualify for VAT zero rating must equally apply to the subcontractor.

Allegedly, petitioner neglected and failed to submit the corresponding Registration with the BOI and Certificate of Endorsement by the DOE for the project located in Northern Negros, Negros Occidental or NIGBU Site, relative to petitioner's VAT Official Receipts Nos. 0619, 0617, and 0618, dated March 21, 2018, February 1, 2018, and February 22, 2018, respectively. Such failure to submit, according to respondent, is fatal to petitioner's claim for a tax refund.

Respondent also argues that a perusal of the contract[1] between petitioner and Energy Development Corporation (EDC) reveals no connection to "Aerated Drilling Services NIGBU Site Package #1" or to petitioner's VAT Official Receipts Nos. 0619,

[1] Exhibit "P-12".

0617, and 0618, dated March 21, 2018, February 1, 2018, and February 22, 2018, respectively. For respondent, petitioner's failure to establish the connection of the contract with its VAT Official Receipts Nos. 0619, 0617, and 0618 is fatal, considering that the transaction subject of zero-rating must be related to the process of exploring and developing renewable energy sources up to the conversion into power as required by RA No. 9513.

Despite notice, petitioner failed to file its comment to respondent's *Motion*.

We resolve.

Respondent's *Motion* must fail.

First, NIGBU stands for **Negros Island Geothermal Business Unit** of EDC, and the same is in **Palinpinon, Negros Oriental,** and not in Northern Negros, Negros Occidental.

Second, while respondent was correct in his observation that petitioner failed to submit EDC's (i) DOE Certificate of Registration; (ii) BOI Certificate of Registration; and (iii) DOE Certificate of Endorsement for its Northern Negros, Negros Occidental Project, the same does not merit reconsideration of the assailed Decision considering the Court's finding that only those services rendered to EDC's projects in Tongonan, Leyte, and Palinpinon, Negros Oriental, are subject to VAT zero-rating for purposes of the present claim, to wit:

> Moreover, and as intimated, being the contractor of aerated drilling service supplier of EDC, petitioner needs to present EDC's (i) DOE Certificate of Registration as an RE Developer; (ii) BOI Registration; and (iii) DOE Certificate of Endorsement for purposes of availing of the zero percent (0%) VAT incentive under RA 9513, pursuant to Section 18 (A), (B) and (C), Rule 5, Part III of the DC No. DC2009-05-08.
>
> However, records reveal that **only EDC's projects in Tongonan, Leyte and Palinpinon, Negros Oriental were duly supported with the aforementioned three (3) documents**, *viz.*:

Location of EDC's Projects	DOE Certificate of Registration	Registration with the BOI	Certificate of Endorsement by the DOE
Tongonan, Leyte	GRESC-2009-10-001 dated October 23, 2009	Certificate of Registration No. 2012-024 dated February 6, 2012	Letter of Endorsement dated June 23, 2020, issued by Director Mylene C. Capongcol, Officer-in-Charge, Renewable Energy Management Bureau (Letter of Endorsement dated June 23, 2020)
Palinpinon, Negros Oriental	GRESC-2009-10-002 dated October 23, 2009	Certificate of Registration No. 2014-027 dated February 12, 2014	Letter of Endorsement dated June 23, 2020
Bacon-Manito Sorsogon/Albay	GRESC-2009-10-003 dated October 23, 2009	None	Letter of Endorsement dated June 23, 2020
Kidapawan City, North Cotabato	GRESC-2009-10-004 dated October 23, 2009	None	Letter of Endorsement dated June 23, 2020
Northern Negros, Negros Occidental	GRESC-2009-10-005 dated October 23, 2009	None	None

Based on the foregoing, petitioner failed to establish that EDC's projects in (1) Bacon-Manito Sorsogon/Albay; (2) Kidapawan City, North Cotabato; and (3) Northern Negros, Negros Occidental have been registered with the BOI. Moreover, EDC's project in Northern Negros, Negros Occidental was not at all mentioned in the Letter of Endorsement dated June 23, 2020, issued by Director Mylene C. Capongcol, Officer-in-Charge of Renewable Energy Management Bureau. **Thus, only the sale of services made to EDC's projects in Tongonan, Leyte, and Palinpinon, Negros Oriental, shall be subject to zero-rating under the law.** (*Boldfacing supplied*)

Finally, considering that NIGBU Site is in Palinpinon, Negros Oriental, and **not** in Negros Occidental as respondent claim to be, a discussion on respondent's assertion that petitioner failed "*to establish the connection of the contract (Exhibits "P-12") with its (sic) petitioner's VAT Official Receipts No. 0619 dated March 21, 2018 (Exhibit P-80), No. 0617 dated February 01, 2018 (Exhibit "P-81") and No. 0618 dated February 22, 2018 (Exhibit "P-82") is fatal considering that the transaction subject of zero-rating must be related to the process of exploring and developing renewable energy sources up to its conversion into power as required by RA No. 9513*", is unnecessary.

Besides, a perusal of the *Contracts for Aerated Fluids Drilling Works*[2] by and between petitioner and EDC shows that petitioner undertook to provide EDC with "works and techniques to design and execute the Aerated Fluids Drilling Program for a Geothermal Well, including the Aerated Fluids Drilling Services and the supply of the specified Goods, Consumables or Contractor Personnel."[3] Truth be told, such aerated fluids drilling works were necessary for EDC's production of geothermal energy.

WHEREFORE, premises considered, respondent's *Motion for Partial Reconsideration* dated January 25, 2024, is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[2] Exhibits "P-12", "P-12-1", "P-12-2", Docket – Vol. II, pp. 627 to 704, 705 to 761, and 762 to 769, respectively.
[3] Recitals and par. 1.87, Exhibit "P-12", Docket – Vol. II, pp. 627 and 636, respectively.