REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CBK POWER COMPANY LIMITED,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1685
(CTA Case No. 8784)

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:

FEB 20 2019
3:01 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before this Court is a Petition for Review filed by petitioner CBK Power Company Limited ("CBK", for brevity) on August 11, 2017. CBK assails the Decision[1] and Resolution[2] dated February 23, 2017 and July 11, 2017, respectively, issued by the CTA Special First Division[3] ("CTA Division", for brevity) in the case *CBK Power Company Limited v. Commissioner of Internal Revenue,* docketed as CTA Case No. 8784. This case is an appeal of the denial of the claim for refund in the amount of ₱50,060,766.08, allegedly representing unutilized or excess creditable input

[1] *Rollo*, pp. 226-383; Penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy.
[2] *Rollo*, pp. 386-396; Penned by Associate Justice Cielito N. Mindaro-Grulla,and concurred in by Associate Justice Erlinda P. Uy. Presiding Justice Roman G. Del Rosario with Concurring and Dissenting Opinion.
[3] Formerly the CTA First Division.

taxes on CBK'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 P1 million, and purchase of capital goods exceeding P1 million, for the period January 1, 2012 to December 31, 2012, all attributable to zero-rated sales for the same period January 1, 2012 to December 31, 2012, pursuant to Sections 108(B)(7) and 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

The dispositive portion of the February 23, 2017 Decision ("Assailed Decision") reads:

> **WHEREFORE,** premises considered, the Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**

The dispositive portion of the July 11, 2017 Resolution ("Assailed Resolution") reads:

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

THE FACTS

The facts of the case as found by the CTA Division, as stated in the Assailed Decision:[4]

> Petitioner CBK Power Company Limited is a partnership duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the NPC Compound, Kalayaan, Laguna. It is a special purpose entity, the sole purpose of which is to engage in all aspects of (a) the design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of the Kalayaan II pumped storage hydroelectric power plant, the New Caliraya Spillway, and other assets to be located in the Province of Laguna, and (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan and Kalayaan I hydroelectric power plants

[4] *Rollo*, pp. 10-51.

and their related facilities located in the Province of Laguna. Petitioner is registered as a VAT entity with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 205-760-474-000. It was issued a BIR Certificate of Registration No. OCN 8RC0000019901 dated April 10, 2000.

xxx xxx xxx

On September 20, 2000, petitioner entered into a Second Accession Undertaking with the National Power Corporation (NPC), Industrias Metalurgicas Pescarmona S.A. (IMPSA), and CBK Power Corporation, wherein petitioner became a party to the Build-Rehabilitate-Operate-Transfer (BROT) Agreement dated November 6, 1998. By virtue of the Second Accession Undertaking, petitioner shall assume and undertake the responsibility to rehabilitate, construct, operate, and maintain the Caliraya, Botocan, and Kalayaan hydroelectric power plants and other civil structures for the purpose of generating electricity for NPC. In consideration thereof, NPC shall pay petitioner Capital Recovery Fees, Operation and Maintenance Fees, and other amounts specified in the BROT Agreement.

Consequently, petitioner entered into an Agreement with IMPSA Construction Corporation designated as Turnkey Contract dated August 18, 2000, whereby IMPSA Construction Corporation as Contractor represented itself to be technically and financially capable of undertaking the design, engineering, procurement, supply of all plant and materials, rehabilitation, construction, commissioning, testing, completion and handover of such power plants, together with the civil structures, access roads and other works as specified in the BROT Agreement, on a fixed price, turnkey basis.

Petitioner filed with the BIR its Monthly VAT Declarations and Original Quarterly VAT Returns for the first, second, third, and fourth quarters of calendar year (CY) 2012 on April 25, 2012, on July 25, 2012, on October 24, 2012, and on January 24, 2013, respectively.

Subsequently, petitioner amended its Monthly VAT Declarations and Quarterly VAT Returns for the same period of January 1, 2012 to December 31, 2012. Petitioner filed its last Amended Quarterly VAT Returns for the four (4) quarters of CY 2012 on October 18, 2013.

On November 18, 2013, petitioner filed with the BIR Large Taxpayers Service (LTS), Revenue District Office (RDO) No. 121, an administrative claim for the refund of the amount of P50,060,766.08, allegedly representing its unutilized or excess creditable input taxes paid or incurred on its domestic purchases of goods and services, all attributable to zero-rated sales for January 1, 2012 to December 31, 2012. It also submitted to the BIR the complete documents in support of its administrative claim dated November 18, 2013 in accordance with Section 112 of the NIRC of 1997, as amended, and its implementing rules and regulations.

Due to respondent's inaction, petitioner filed the present Petition for Review on March 21, 2014.

On April 14, 2014, respondent filed his Answer, interposing the following Special and Affirmative Defenses:

xxx xxx xxx

The case was set for Pre-Trial Conference on May 30, 2014. Respondent's Pre-Trial Brief was filed on May 14, 2014; while petitioner filed its Pre-Trial Brief on May 21, 2014.

The parties filed their Joint Stipulation of Facts and Issues on June 13, 2014 and Supplemental Joint Stipulation of Facts and Issues on July 1, 2014. Both were approved by the Court in the Resolution dated September 17, 2014. The Pre-Trial Order was issued on October 9, 2014.

During the trial, petitioner presented its documentary and testimonial evidence. It presented two witnesses namely: Fernando J. De la Paz; and Atty. Leonard L. Escueta, the Independent Certified Public Accountant (CPA).

On May 12, 2015, petitioner filed its Formal Offer of Evidence, xxx xxx xxx. Respondent filed his Comment (On Petitioner's Formal Offer of Evidence) on May 13, 2015.

xxx xxx xxx

Respondent manifested that there is no report of investigation and that he will no longer present any witness.

Both parties were given thirty (30) days within which to file their respective memoranda.

Respondent filed his Memorandum on July 16, 2015; while the Memorandum for the Petitioner was filed on March 7, 2016. Hence, the case was submitted for decision.

On February 23, 2017, the CTA Division denied CBK's Petition for Review, for lack of merit.

On July 11, 2017, the CTA Division denied CBK's Motion for Reconsideration, for lack of merit.

On August 1, 2017, the CTA *En Banc* granted CBK's "Motion for Extension of Time to File Petition for Review." Within the period of extension granted, CBK filed its Petition for Review.

On September 8, 2017, this Court ordered CIR to file Comment. However, CIR failed to file Comment on CBK's petition.[5]

On November 29, 2017, the Court required the parties to file their respective Memoranda. CIR filed his Memorandum on January 26, 2018. On the other hand, CBK filed its Memorandum on February 13, 2018. This case was submitted for decision on February 28, 2018.

ISSUE

Petitioner seeks the reversal and setting aside of the CTA Special First Division's Decision and Resolution dated February 23, 2017 and July 11, 2017, based on the following Assignment of Errors:[6]

A. Petitioner was denied its Constitutional right to due process of law under Section 1, Article III and Section 14, Article VIII of the Constitution when, in the absence of any factual and legal basis, the Honorable Court's First Division [Special First Division] applied the provisions of RA No. 9513, RMC No. 74-99, Q-3/A-3 of BIR RMC No. 42-2003, the Cross Border Doctrine, 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

[5] Records Verification dated October 19, 2017, *Rollo*, p. 480.
[6] Petition for Review, pp. 6-9; *Rollo*, pp. 124-127; Underlines were omitted.

refund because Petitioner's purchases of local supply of goods, properties and services, importation of goods other than capital goods, and payments for services rendered by non-residents, are zero-rated under RA No. 9513, contrary to the *verba legis principle*; and did not apply the plain language of the VAT provisions of the NIRC of 1997, as amended by RA No. 9337;

1. There was no factual finding that Petitioner is registered with the DOE under RA No. 9513 in both the Honorable Court's First Division's assailed Decision and Resolution in violation of the due process requirement;

2. In spite of the fact that Respondent did not allege in its pleadings and in open court, and did not present any evidence that Petitioner is registered with DOE under RA No. 9513, the Honorable Court's First Division [Special First Division] went beyond the approved issues in the Joint Stipulation of Facts and Issues by applying RA No. 9513 in the instant case; and

3. The Honorable Court's First Division erred when it interpreted that RA No. 9513, RMC No. 74-99, Q-3/A-3 of BIR RMC No. 42-2003, the Cross Border Doctrine, and the Coral Bay case are applicable to Petitioner contrary to the *verbal legis* principle;

B. Moreover, contrary to the provisions of Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended by RA No. 9337, the Honorable Court's First Division erred when it concluded that "petitioner's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities" as well as petitioner's importation of goods other than capital goods and payments for services rendered by non-residents, "are also zero-rated in accordance with Section 15(g) of RA No. 9513 or the Renewable Energy Act of 2008";

1. First of all, pursuant to the general rule on VAT, sales to Petitioner by its local suppliers of goods and services as well as Petitioner's importation of goods and payments for services rendered by non-residents are subject to 12% VAT under Sections 105, 106, 107 and 108 of the NIRC of 1997, as amended by RA No. 9337; gc

2. Secondly, Petitioner is not an entity that enjoys "exemptions under special laws or international agreement to which the Philippines is a signatory," that will effectively subject sales or supply of services to it to zero percent (0%) VAT rate under Section 106(A)(2)(c) and Section 108(B)(3) of the NIRC of 1997, as amended by RA No. 9337; and

3. RA No. 9513 is not applicable in the resolution of the instant case because Petitioner is not registered with DOE under RA No. 9513 and did not avail of any of the incentives granted under RA No. 9513;

C. In contravention of the plain meaning rule, the Honorable Court further erred in applying the ruling in the Coral Bay case and the provisions of BIR RMC No. 74-99; and Q-3/A-3 of BIR RMC No. 42-2003 and in consequently holding that "petitioner's recourse for its purchases of goods and services where it paid VAT is not a claim for refund against the BIR; but to seek reimbursement of its alleged input VAT paid from its suppliers of goods and services;

1. THE LAW IS CLEAR that any VAT-registered person may apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to its zero-rated sales pursuant to Section 112 of the Tax Code of 1997, as amended, hence, there is no factual and legal basis for Petitioner to seek reimbursement of input taxes from its suppliers of goods and services;

2. Q-3/A-3 of BIR RMC No. 42-2003 which addresses the issue of sales transactions of suppliers of exporters-claimants which were already considered as effectively zero-rated by virtue of the BIR's approval of their applications for zero-rating, is not applicable to Petitioner's local suppliers of goods and services; importation of goods and payment for services rendered by non-residents and Petitioner who is not an exporter; and

3. The statement regarding reimbursement of the VAT paid from local suppliers, the Cross Border Doctrine enunciated in the Coral Bay case; and BIR RMC No. 74-99 implementing RA No. 7916, as amended, are not applicable to sales of local and foreign suppliers of Petitioner; and

D. The Honorable Court's First Division erred when it did not find that Petitioner is entitled to cash refund/VAT refund in the amount of P50,060,766.08, representing unutilized or excess creditable input taxes paid or incurred 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 P1 million, and purchases of capital goods exceeding P1 million, for the period January 1, 2012 to December 31, 2012, all attributable to zero-rated sales for the period January 1, 2012 to December 31, 2012, despite the fact that Petitioner has complied with all the basic requirements in order to be entitled to a cash refund/VAT refund of its unutilized input taxes in accordance with Sections 108(B)(7), and 112(A) and (C) of the NIRC of 1997, as amended by RA No. 9337.

Based on the foregoing, the issue in this case is whether the CTA Division erred in the denial of CBK's Petition for Review for lack of merit.

THIS COURT'S RULING

The petition is denied.

In this case, it is already settled that CBK's administrative and judicial claims were timely filed,[7] and that CBK's sales of electricity generated through hydropower are subject to zero percent (0%) VAT,[8] pursuant to Section 108 (B) (7) of the NIRC of 1997, as amended[9], and Section 4.108-5 (b)(7) of Revenue Regulations (RR) No. 16-2005.[10] *[initials]*

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[7] Assailed Decision, pp. 44-46; *Rollo*, pp. 369-371.
[8] Assailed Decision, pp. 46-50; *Rollo*, pp. 371-375.
[9] "SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
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."
[10] "SECTION 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."

A reading of CBK's allegations and arguments in the instant case reveal that these are similar, with additional discussions, to what were raised in its Motion for Reconsideration in the CTA Division except the arguments that the CTA Division allegedly failed to comply with Section 14, Article VIII of the Constitution and that there is no factual finding that CBK is registered with DOE under RA 9513.

The allegation that the CTA Division failed to comply with Section 14, Article VIII of the Constitution is bereft of merit.

Pertinent to this are Section I, Article III and Section 14, Article VIII of the Constitution, which state that:

> "ARTICLE III
> Bill of Rights
>
> SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."
>
> "ARTICLE VIII
> Judicial Department
>
> Xxx xxx xxx
>
> SECTION 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. xxx xxx xxx"

A reading of the assailed Decision as well as the Resolution revealed that the CTA Division gave CBK enough opportunity to defend its case during the trial and even during the filing of the motion for reconsideration in compliance with the due process requirement. The CTA Division also ruled on the CBK's claim for refund based on its own findings. 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. This Court finds it just and proper for the CTA Division to apply RA No. 9513 to the instant case since based on its findings, CBK is an RE Developer, thus, its transactions are covered by the said law.

In the Assailed Decision and Resolution, the CTA Division cited Section 15 (g) of RA No. 9513 or the Renewable Energy Act of 2008, which states:

"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:

xxx xxx xxx

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

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors." *(Emphasis supplied)*

The CTA Division also cited Part III, Rule 5, Section 13 (G) (b) of DOE Circular No. DC2009-05-0008 issued by the Department of Energy (DOE) on May 25, 2009, which implements the above provision, as follows:

"PART III.
Incentives for Renewable Energy Projects and Activities

RULE 5.
General Incentives and Privileges for Renewable Energy Development

SECTION 13. *Fiscal Incentives for Renewable Energy Projects and Activities.* — *[initials]*

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:

(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;

(b) Purchase of local goods, properties and services **needed for the development, construction, and installation of the plant facilities** of RE Developers; and

(c) **Whole process of exploration and development of RE sources up to its conversion into power,** including, but not limited to, the services performed by subcontractors and/or contractors." *(Emphasis supplied)*

In applying the above provisions, the CTA Division discussed that:[11]

"The foregoing provisions are clear. Petitioner, being a RE Developer, is entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power.

xxx xxx xxx

Applying the foregoing provisions, it is evident that **no output VAT shall be shifted to or passed on to RE**

[11] Assailed Decision, pp. 53-54; *Rollo*, pp. 378-379.

> **Developers, such as herein petitioner, in connection with their purchases of goods and services needed for the development, construction, and installation of their plant facilities as well as to the whole process of exploration and development of RE sources up to its conversion into power. Conversely, no input VAT shall be paid by RE Developers on these transactions. There being no input VAT to be paid by RE Developers, it necessarily follows that they are not entitled to refund, or issuance of TCC from the said purchases.** *(Emphases Supplied.)*
>
> Simply stated, petitioner could not have paid input taxes on its purchases of goods and services from VAT-registered suppliers because such purchases being zero-rated, that is, no output tax was paid by the suppliers, no input tax was shifted or passed on to petitioner. The VAT is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services."

We reiterate with approval the following discussions in the assailed Resolution:[12]

> "**RA No. 9513 makes no distinction as to what type of transactions are covered by the phrase 'whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.'** Also, it is observed that petitioner's alleged other sources of input taxes such as the importation of goods other than capital goods and payments for services rendered by non-residents are claimed to be attributable to petitioner's zero-rated sales. Thus, these other sources of input taxes can be considered as included in the whole process of exploring and developing of renewable energy sources until its conversion into power, and are therefore, zero-rated.
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> xxx xxx xxx
>
> In the assailed Decision, the Court already discussed the applicability of the principle in Coral Bay cases with the present case, as follows:
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> xxx xxx xxx

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[12] Assailed Resolution, pp. 8-10; *Rollo*, pp. 393-395.

> xxx xxx xxx in the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,*[13] wherein the Supreme Court held that the proper party to seek the tax refund or credit should be the suppliers, not the petitioner (Coral Bay), as follows:
>
> > 'We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner.'

By analogy, the **principle in *Coral Bay*** cases may be **applied insofar as petitioner cannot seek a refund from the BIR of its unutilized input taxes because under RA No. 9513, its 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.** For this reason, Part III, Rule 5, Section 13(G)(b) of DOE Circular No. DC2009-05-0008 issued by the Department of Energy (DOE) on May 25, 2009 implementing RA No. 9513 necessarily finds application to the present case. Similarly, the Court **applied Revenue Memorandum Circular (RMC) No. 42-2003 dated July 15, 2003 but only with regard to the recourse of petitioner's claim for input tax credit concerning its zero-rated sale and purchases, that is, to seek reimbursement of the VAT paid, from its supplier.** *(Emphases Ours).*

Thus, the Court concluded that since no input VAT should be paid by petitioner, it is not, therefore entitled to a refund, or issuance of TCC from its purchases of goods and services needed for the development, construction, and installation of their plant facilities as well as to the whole process of exploration and development of RE sources up to its conversion into power xxx xxx xxx." *Je*

[13] G.R. No. 190506, June 13, 2016.

Based on the foregoing discussions, CBK cannot seek a refund from the BIR of its unutilized input taxes because under RA No. 9513, its 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. The CTA Division is correct in its conclusion "that since no input VAT should be paid by petitioner, it is not, therefore entitled to a refund, or issuance of TCC from its purchases of goods and services needed for the development, construction, and installation of their plant facilities as well as to the whole process of exploration and development of RE sources up to its conversion into power."[14]

In the Supreme Court case of *Commissioner of Internal Revenue v. Far East Bank & Trust Company,*[15] the Supreme Court emphasized 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. Pertinent portions of the said Decision reads:

> **"The burden is on the taxpayer to prove its entitlement to the refund.**
>
> Moreover, **the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.**
>
> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. **The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.**
>
> Hence, for failing to prove its entitlement to a tax refund, respondent's claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, **evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.** *(Emphases Supplied.)* gr

[14] Assailed Resolution, p. 10; *Rollo*, p. 395.
[15] G.R. No. 173854, March 15, 2010, 615 SCRA 430-431; Citations Omitted.

In this case, CBK alleges, without showing proof, that it is not covered by RA No. 9513. This is the first time that CBK raised this argument. 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 estoppel.[16]

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[17] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

Based on the foregoing discussions, this Court finds no reversible error to disturb the assailed Decision and Resolution of the CTA Special First Division.

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.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[16] *Commissioner of Internal Revenue v. Puregold Duty Free, Inc.*, G.R. No. 202789, June 22, 2015.
[17] G.R. No. 188016, January 14, 2015 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446.

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see my CDO.)
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

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Promulgated:

FEB 20 2019 3:01 p.m.

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CONCURRING AND DISSENTING OPINION

MANAHAN, *J.:*

I concur with the majority's decision to affirm the First Division's ruling that the administrative and judicial claims for refund of input VAT for taxable year 2012 were timely filed based on Section 112 (C) of the 1997 National Internal Revenue Code, as amended.

I also concur with their findings that petitioner is engaged in zero-rated or effectively zero-rated sales, i.e, sale of power using renewable sources of energy based on Section 108 (B) (7) of the same Code.

I respectfully dissent, however, from the majority view that petitioner's recourse is not to apply for a tax refund from the government but instead seek reimbursement from its suppliers who shifted to it the output VAT. More so, when the majority reasoned that under the law, petitioner is clearly subject to VAT at zero percent and that since no input VAT should have been paid by the latter, it is therefore not entitled to a refund or issuance of a Tax Credit Certificate from its domestic purchases of goods and services attributable to its zero-rated sales.

The Majority based its conclusion on the ruling of the Supreme Court in the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[1] where it was ruled that the taxpayer's recourse is not against the government but against the seller/supplier who shifted to it the output VAT.

With all due respect, the case of *Coral Bay Nickel Corporation vs. CIR* (Coral Bay case) is not analogous to the instant case because in the Coral Bay case, the refund involves refund of input taxes originating from sales of local suppliers to *PEZA-registered enterprises.* Coral Bay Nickel Corporation is a PEZA-registered enterprise while herein petitioner is a Renewable Energy (RE) Developer. I will not however delve on the distinct differences between these two types of entities and the types of transactions considered to be zero-rated except to say that both PEZA registered entities and RE Developers are different types of entities entitled to a different set of incentives; different conditions for availment etc. To apply the *Coral Bay case* unequivocally to the situation of petitioner may lead to erroneous conclusions given the stark difference in the factual milieu of both cases.

Moreover, the issue presented to the Court in Division is as follows:

> "Whether or not petitioner is entitled to a cash refund/VAT refund in the amount of Php50,060,766.08, allegedly representing unutilized or excess creditable input taxes on petitioner's purchases of goods other than capital goods, importations of goods other than capital goods not exceeding 1 million, and purchase of capital goods exceeding Php 1 million, for the period January 1, 2012 to December 31, 2012, all atrributable to zero rated sales for the same period January 1, 2012 to December 31, 2012, pursuant to Sections 108 (B) (7) and 112 (A) of the National Internal Revenue Code (NIRC) as amended." [2]

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[1] G.R. No. 190506, June 13, 2006.
[2] Decision in CTA Case No 8784 dated February 23, 2017 EB Docket, page 51.

To my mind, there is a need to de-clutter the evidentiary standards for claims for refund of input VAT attributable to its zero-rated or effectively zero-rated sales and simply resolve it on the basis of whether or not the taxpayer complied with the following well-settled requisites:

1. That the taxpayer is VAT-registered;
2. That the claim for refund was filed within the prescriptive period;
3. That there must be zero-rated or effectively zero-rated sales;
4. That input taxes were incurred or paid;
5. That such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. That the input taxes were not applied against any output VAT liability.

Additionally, if records would show that output and input taxes were paid by the local supplier/s and petitioner, respectively, I humbly believe that recourse against the government by way of a claim for refund, is more legally sound than directing the claimant to seek redress from its suppliers.

I cannot subscribe to the view that because petitioner should not have paid the input VAT because its sales are zero-rated, it is not therefore entitled to its refund from its purchases of goods and services needed for the development, construction etc. of tis plant facilities. The issue that still persists is whether the local suppliers passed on the input VAT to petitioner and that the latter paid said input tax, thus even if the petitioner should not have incurred input taxes, there may still be a valid claim if petitioner could prove that its suppliers indeed passed on the VAT instead of subjecting such sales (to petitioner) to zero-rate.

The quasi-contract of *solutio indebiti* also applies to claims for refund of taxes. Article 2154 of the Civil Code is in point thus:

> "Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."

In the case of *Filinvest Development Corporation vs. CIR and CTA*[3], the Supreme Court elaborated on the principle of *solutio indebiti* as they relate to the payment of taxes, thus:

> "That no one shall unjustly enrich oneself at the expense of another is a long-standing principle prevailing in our legal system. This applies not only to individuals but to the State as well. In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*,-the Government has to restore to petitioner the sums representing erroneous payments of taxes.

The underlying principle of *solutio indebiti* is precisely to correct or rectify a situation where the payor has no obligation to pay but for some reason, nevertheless paid an amount hence the obligation to return what was paid arises. In the case of *BPI vs. Sarmiento*[4], the Supreme Court provided the two essential conditions for *solutio indebiti* to arise, and we quote:

> "There is solutio indebiti where: 1) **payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment**; and (2) the payment is made through mistake, and through liberality or some other cause. xxx xxx" (emphasis supplied)

In view of the foregoing, I vote to decide the Petition for Review on the basis of the factual veracity of the evidence presented by both parties instead of denying the claim for refund on the ground relied upon by the majority.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[3] G.R. No. 146941, August 9, 2007.
[4] G.R. No. 146021, March 10, 2006.