REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TeaM ENERGY CORPORATION (Formerly: MIRANT PAGBILAO CORPORATION),
Respondent.

CTA EB No. 1364
(CTA CASE NO. 7617)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

AUG 31 2016 9:55 a.m.

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DECISION

DEL ROSARIO, PJ.:

This is a Petition for Review filed by the Commissioner of Internal Revenue pursuant to Section 3 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals, praying for the Court *En Banc* to reverse the Resolutions dated May 29, 2015 and September 9, 2015 issued by the CTA Special First Division[1] (Court in Division) in CTA Case No. 7617, entitled *Team Energy Corporation (Formerly: Mirant Pagbilao Corporation) vs. Commissioner of Internal Revenue* which granted respondent's Motion for Reinstatement of the 13 July 2010 Decision. The dispositive portion of the assailed Resolutions are as follows:

[1] Composed of Associate Justice Caesar A. Casanova and Associate Justice Lovell R. Bautista.

29 May 2015 Resolution:

"**WHEREFORE**, premises considered, petitioner's Motion for Reinstatement of the July 13, 2010 Decision of the Court of Tax Appeals is **GRANTED**. Accordingly, the July 13, 2010 Decision of the CTA Special First Division is hereby **REINSTATED**."

SO ORDERED."

09 September 2015 Resolution:

"**WHEREFORE**, premises considered, respondent's Motion for Reconsideration (re: Resolution dated 29 May 2015) is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered, among others, to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[2]

Respondent is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal office at Pagbilao Grande Island, Pagbilao, Quezon.[3] Respondent is principally engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate, Transfer Scheme.[4]

Respondent is also registered with the BIR as a VAT taxpayer in accordance with Section 107 of the National Internal Revenue Code of 1977 [now Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997)] with Tax Identification No. 001-726-870 as shown on its BIR Certificate of Registration bearing RDO Control No. 96-600-002498.[5]

Respondent was originally registered with the Securities and Exchange Commission (SEC) under the name "Hopewell Power

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[2] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Admitted Facts, *CTA Division Docket*, vol. 1, p. 269.
[3] Par. 1, JSFI, Jointly Stipulated of Facts, *CTA Division Docket*, vol. 1, p. 270.
[4] Par. 2, *Id.*
[5] Par. 3, *Id.*

(Philippines), Corporation" which was subsequently changed to "Southern Energy Quezon, Inc." on 22 September 1999.[6]

On June 28, 2001, respondent's name was officially changed from "Southern Energy Quezon, Inc." to "Mirant Pagbilao Corporation" as shown by the SEC Certificate of Filing of Amended Articles of Incorporation.[7]

On December 17, 2004, respondent filed with the BIR Audit Information, Tax Exemption and Incentives Division an Application for Effective Zero-Rate for the supply of electricity to the NPC for the period January 1, 2005 to December 31, 2005, which was subsequently approved.[8]

Respondent filed with the BIR its Quarterly VAT Returns for the first three quarters of 2005 on April 25, 2005,[9] July 26, 2005,[10] and October 25, 2005,[11] respectively. Respondent also filed its Monthly VAT Declaration for the month of October 2005 on November 21, 2005,[12] which was subsequently amended on May 24, 2006.[13] These VAT Returns reflected, among others, the following entries:

Exhibit	Period Covered	Zero-Rated Sales/Receipts	Taxable Sales	Output VAT	Input VAT
"C"	1st Qtr-2005	P3,044,160,148.16	P1,397,107.80	P139,710.78	P16,803,760.82
"D"	2nd Qtr-2005	3,038,281,557.57	1,241,576.30	124,157.63	32,097,482.29
"E"	3rd Qtr-2005	3,125,371,667.08	452,411.64	45,241.16	16,937,644.73
"G" (amended)	October 2005		910,949.50	91,094.95	14,297,363.76
	Total	P9,207,813,372.81	P4,002,045.24	P400,204.52	P80,136,251.60

On December 20, 2006, petitioner filed an administrative claim[14] for cash refund or issuance of tax credit certificate corresponding to the input VAT reported in its Quarterly VAT Returns for the first three quarters of 2005 and Monthly VAT Declaration for October 2005 in the amount of P80,136,251.60.

[6] Par. 4, *Id.*
[7] Par. 5, *Id.*
[8] Par. 6, *Id.*
[9] Exhibit "C-1".
[10] Exhibit "D-1".
[11] Exhibit "E-1".
[12] Exhibit "F-1".
[13] Exhibit "G-1".
[14] Exhibits "B" and "B-1".

Due to petitioner's inaction on its claim, respondent filed a Petition for Review[15] before the Court in Division on April 18, 2007, docketed as CTA Case No. 7617.

In her *Answer*[16] filed on May 25, 2007, petitioner interposed the following Special and Affirmative Defenses:

> (1) The alleged claim for refund is subject to administrative investigation/examination;
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> (2) Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law;
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> (3) Respondent failed to prove compliance with: (a) the registration requirements of a value-added taxpayer; (b) the invoicing and accounting requirements for VAT-registered persons; (c) the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code of 1997, as amended; (d) the submission of complete documents in support of the administrative claim pursuant to Section 112 (D). Respondent likewise failed to prove that the input taxes paid were attributable to zero-rated sales, used in the course of its trade or business, and have not been applied against any output tax and that the claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code of 1997, as amended; (e) the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code, as amended;
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> (4) The burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit; and,
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> (5) Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

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[15] Petition for Review, *CTA Division Docket*, vol. 1, pp. 1-12.
[16] Answer, *CTA Division Docket*, vol. 1, pp. 239-245.

During trial, respondent presented documentary and testimonial evidence. The exhibits enumerated in respondent's Formal Offer of Evidence[17] were admitted in the Resolution dated January 29, 2009.[18] Petitioner, on the other hand, waived her right to present evidence.[19]

The case was submitted for Decision on July 13, 2009.[20]

On July 13, 2010, the Court in Division[21] issued a Decision[22] partially granting respondent's Petition, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **SEVENTY-NINE MILLION ONE HUNDRED EIGHTY-FIVE THOUSAND SIX HUNDERED SEVENTEEN AND 33/100 PESOS (P79,185,617.33)** in favor of petitioner, representing petitioner's unutilized input VAT, attributable to its effectively zero-rated sales of power generation services to NPC for the period covering January 1, 2005 to October 31, 2005.
>
> **SO ORDERED.**"

On August 5, 2010, petitioner filed a "Motion for Reconsideration (Re: Decision promulgated 13 July 2010)".[23]

On November 26, 2010, the Court in Division issued an Amended Decision[24] which granted petitioner's Motion for Reconsideration, reversed and set aside the Decision dated July 13, 2010, and dismissed the Petition for Review for having been filed prematurely.

On December 17, 2010, respondent filed a "Petition for Review"[25] before the Court *En Banc* docketed as CTA *En Banc* Case No. 706.

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[17] *CTA Division Docket*, vol. 1, pp. 538-562.
[18] *CTA Division Docket*, vol. 1, pp. 566-567.
[19] Minutes of the Hearing dated April 21, 2009, *CTA Division Docket*, vol. 1, p. 573.
[20] *CTA Division Docket*, vol. 1, p. 636.
[21] Composed of then Presiding Justice Ernesto D. Acosta as chairperson, Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova.
[22] *CTA Division Docket*, vol. 1, pp. 639-653.
[23] Motion for Reconsideration (Re: Decision promulgated 13 July 2010), *CTA Division Docket*, vol. 1, pp. 659-670.
[24] *CTA Division Docket*, vol. 1, pp. 690-695.
[25] *CTA Division Docket*, vol. 1, pp. 702-738.

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In a Resolution dated May 2, 2011,[26] the Court *En Banc* denied due course to respondent's Petition for Review for lack of merit. Respondent filed a "Motion for Reconsideration"[27] on May 24, 2011 assailing the 2 May 2011 Resolution, but the same was denied in the Court *En Banc*'s Resolution dated July 15, 2011[28] for lack of merit.

On September 8, 2011, respondent filed a "Motion to Admit Attached Petition for Review on Certiorari"[29] before the Supreme Court. The Supreme Court Third Division issued a Resolution[30] on November 28, 2011 granting respondent's Motion.

On January 13, 2014, the Supreme Court issued a Decision[31] granting respondent's Petition for Review on *Certiorari*, reversing and setting aside the May 2, 2011 and July 15, 2011 Resolutions issued by the Court *En Banc* in CTA EB No. 706, and remanding the case to this Court for the proper determination of the refundable amount. The Court in Division received the Notice of Judgment[32] and Decision[33] from the Supreme Court on February 26, 2014. The dispositive portion of the Supreme Court's Decision reads:

> "WHEREFORE, the foregoing considered, the instant Petition for Review on Certiorari is hereby GRANTED. The May 2, 2011 and the July 15, 2011 Resolutions of the Court of Tax Appeals En Banc in CTA EB Case No. 706 are REVERSED and SET ASIDE. Let this case be remanded to the Court of Tax Appeals for the proper determination of the refundable amount.
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> SO ORDERED."

The said Supreme Court Decision became final and executory on March 10, 2014 and was recorded in the Book of Entries of Judgments by the Deputy Clerk of Court & Chief, Judicial Records Office of the Supreme Court. The Court received the Entry of Judgment[34] on July 15, 2014.

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[26] *CTA Division Docket*, vol. 1, pp. 780-793.
[27] *CTA Division Docket*, vol. 2, pp. 798-818.
[28] *CTA Division Docket*, vol. 2, pp. 891-895.
[29] *CTA Division Docket*, vol. 2, pp. 900-933.
[30] *CTA Division Docket*, vol. 2, p. 1004.
[31] *CTA Division Docket*, vol. 2, pp. 1084-1089.
[32] *CTA Division Docket*, vol. 2, p. 1083.
[33] *CTA Division Docket*, vol. 2, pp. 1084-1089.
[34] *CTA Division Docket*, vol. 2, pp. 1094-1095.

On January 9, 2015, respondent filed a "Manifestation with Motion for Reinstatement of the 13 July 2010 Decision of the Court of Tax Appeals."[35]

On May 29, 2015, the Court in Division issued a Resolution[36] granting respondent's Motion for Reinstatement and reinstated the July 13, 2010 Decision of the Court in Division. Petitioner posted a "Motion for Reconsideration (re: Resolution dated 29 May 2015)"[37] on June 23, 2015.

On September 9, 2015, the Court in Division denied petitioner's Motion for Reconsideration.[38]

On October 16, 2015, which is within the extended period,[39] petitioner Commissioner of Internal Revenue filed the present Petition for Review before the Court *En Banc*.[40] Respondent filed its "Comment/Opposition (To: Petitioner's Petition for Review dated 16 October 2015)"[41] on February 19, 2016.

This case was submitted for Decision on March 28, 2016.[42]

PETITIONER'S ARGUMENTS

Petitioner argues that respondent failed to substantiate its claim for refund as it did not prove that it is a generation company authorized by the Energy Regulatory Commission (ERC). Petitioner elaborates that while it has been stipulated that respondent was principally engaged in the business of power generation, it failed to establish that it has secured an authorization from the ERC to operate as such for the particular period in question. Petitioner forwards that in the absence of a Certificate of Compliance from the ERC, respondent cannot be considered as a generation company as contemplated under our laws. Petitioner cited the case of *Toledo vs. Commissioner of Internal Revenue*[43] where the CTA ruled that the Certificate of Compliance is indispensable to a claim for refund.

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[35] *CTA Division Docket*, vol. 2, pp. 1097-1103.
[36] *CTA Division Docket*, vol. 2, pp. 1133-1137.
[37] *CTA Division Docket*, vol. 2, pp. 1138-1143.
[38] *CTA Division Docket*, vol. 2, pp. 1161-1164.
[39] CTA EB No. 1364, *Rollo*, p. 6.
[40] CTA EB No. 1364, *Rollo*, pp. 8-30.
[41] CTA EB No. 1364, *Rollo*, pp. 61-74.
[42] Resolution dated March 28, 2016, *CTA EB No. 1364 Rollo*, pp. 76-77.
[43] CTA Case No. 6961, November 11, 2009.

Petitioner also asserts that the judicial claim was filed prematurely since respondent did not exhaust administrative remedies when it failed to submit the complete documents in support of its administrative claim for refund with the BIR which is required before the 120-day period to decide shall apply, and before the taxpayer could avail of judicial remedies. Petitioner concludes that respondent's failure to substantiate its administrative claim should result in the denial of its claim for refund.

RESPONDENT'S ARGUMENTS

Respondent, on the other hand, counters that petitioner's admission during trial that it is engaged in the business of power generation services is binding against him.

Respondent also contends that its claim for refund or issuance of tax credit certificate (TCC) is anchored on Section 112(A) of the NIRC of 1997, as amended in relation to Section 108(B)(3) of the same Code and Section 13 of Republic Act (RA) No. 6395; hence, the requirement of a Certificate of Compliance is immaterial as the claim for refund is not based on the Electric Power Industry Reform Act (EPIRA).

Respondent further asserts that, contrary to petitioner's claim, it submitted complete documents to the BIR in support of its administrative claim.

ASSIGNED ERROR

The sole issue in this case is whether the Court in Division erred in reinstating the CTA Decision dated 13 July 2010.

RULING OF THE COURT *EN BANC*

Section 4 (x) of RA No. 9136[44] (EPIRA), defines a generation company as:

Section 4. *Definition of Terms.* –

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[44] Entitled, "An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes."

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(x) "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

Under the Rules and Regulations to Implement Republic Act No. 9136, entitled "Electric Power Industry Reform Act", generation companies are required and obligated to secure from the ERC a COC to be able to operate as one, to wit:

"PART II - STRUCTURE AND OPERATION OF THE ELECTRIC POWER INDUSTRY

RULE 5. GENERATION SECTOR

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 unless such Person has received a COC from the ERC 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.

xxx xxx xxx

Section 4. Obligations of a Generation Company.

(a) A COC shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be issued upon compliance with such standards and requirements.

(i) A Person owning an existing Generation Facility or a Generation Facility under construction, shall submit within ninety (90) days from effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operational history, a general company profile and other

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> information that ERC may require. Upon making a complete submission to the ERC, such Person shall be issued a COC by the ERC to operate such existing Generation Facility." (*Boldfacing supplied*)

The 2014 Revised Rules for the Issuance of Certificates of Compliance (COCs) for Generation Companies/Entities with Self-Generation Facilities also mandates the generation company to secure a COC from the ERC, *viz*:

> "Section 2. **Guiding Principles.** –
>
> (a) No Person may engage in the Generation of Electricity as a Generation Company unless it has secured a COC from the ERC to operate facilities used in the Generation of Electricity.
>
> xxx xxx xxx

Clearly, under the EPIRA, there is a need for a generation company to secure a COC from the ERC in order to be registered as such and be able to engage in the generation of electricity. Once considered as a generation company under the EPIRA, the sales of generated power by such generation company shall be VAT zero-rated.[45] Failure to present a COC before the Courts is fatal to a taxpayer's claim. In *Commissioner of Internal Revenue vs. Toledo Power Company*[46] (*Toledo*), the Supreme Court stressed the necessity of securing a COC before sales of electricity can qualify for VAT zero-rating, *viz*:

> "In this case, when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 2002, it did not automatically become a generation company. **It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA.**" (*Boldfacing supplied*)

The contention that petitioner practically admitted that respondent is a generation company on account of the parties' stipulation in its Joint Stipulation of Facts & Issue[47] that petitioner

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[45] Par. 5, Section 6 of EPIRA.
[46] G.R. Nos. 196415 & 196451, December 2, 2015.
[47] *CTA Division Docket*, pp. 269-272, 270

(herein respondent) is principally engaged in the business of power generation and subsequent sale thereof to NPC under the Build, Operate and Transfer (BOT) Scheme is of no moment. In *Toledo*,[48] the Supreme Court addressed the same argument and observed that a stipulation that Toledo Power Company (TPC) is engaged in the business of power generation is not tantamount to an admission that it is a generation company, *viz*:

> "**There is nothing in the JSFI to show that the parties agreed that TPC is a generation company under the EPIRA.** The pertinent portions of the JSFI read:
>
> JOINTLY STIPULATED FACTS
>
> **1. [TPC] is principally engaged in the business of power generation and subsequent sale thereof to the [NPC, CEBECO, ACMDC, and AFC].**
>
> 2. On 20 June 2002, petitioner filed an application with the Energy Regulatory Commission (ERC) for the issuance of a Certificate of Compliance pursuant to the Implementing Rules and Regulations of the EPIRA.
>
> x x x x
>
> ADMITTED FACTS
>
> x x x x
>
> 3. Effective 26 June 2001, sales of generated power by generation companies became VAT zero-rated by virtue of Section 4(x) in relation to Section 6 of the EPIRA and Rule 5, Section 6 of the Rules and Regulations to Implement the EPIRA.
>
> **Obviously, the parties did not stipulate that TPC is a generation company. They only stipulated that TPC is engaged in the business of power generation** and that it filed an application with the ERC on June 20, 2002. **However, being engaged in the business of power generation does not make TPC a generation company under the EPIRA.** Neither did TPC's filing of an application for COC with the ERC automatically entitle TPC to the rights of a generation company under the EPIRA." (*Boldfacing supplied*)

The foregoing notwithstanding, the Court sees no reason to deny the claim on the ground of respondent's failure to present its COC. It should be stressed that respondent's present claim for refund of unutilized input VAT attributable to its zero-rated sales of electricity

[48] Supra, note 46.

to NPC for the period covering January 1, 2005 to October 31, 2005 is anchored on Section 108 (B)(3) of the NIRC[49] **and not on the EPIRA**.

Section 108 (B) (3) of the NIRC of 1997, as amended allows zero-rating of services rendered to persons/entities whose exemption under special law effectively subjects the supply of such services to zero-rate, *viz*:

> "Section 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
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate; xxx"

In this case, it is undisputed that respondent is principally engaged in the business of power generation and subsequent sale thereof to NPC under a BOT Scheme,[50] and the Court in Division found that respondent actually generated receipts from power generation services rendered to NPC.[51] Such sale of power generation services to NPC qualifies for zero-rating under the aforequoted provisions of Section 108 (B)(3) of the NIRC of 1997, as amended since NPC is an entity enjoying exemption from payment of all taxes pursuant to Section 13 of RA No. 6395,[52] which states:

> "Sec. 13. Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and other Charges by Government and Governmental Instrumentalities. —
>
> The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective

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[49] *CTA Division Docket*, pp. 4-5.
[50] *CTA Division Docket*, pp. 269-270.
[51] *CTA Division Docket*, p. 649.
[52] An Act Revising the Charter of the National Power Corporation.

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implementation of the policy enunciated in Section one of this Act, **the Corporation is hereby declared exempt**:

(a) **From the payment of all taxes**, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;

(b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;

(c) From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects; and

(d) From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power." (*Boldfacing supplied*)

NPC's exemption from all forms of tax, both direct and indirect, was recognized as early as in *Maceda vs. Macaraig, Jr.*[53] In *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[54] the Supreme Court is more categorical in declaring that NPC is exempt from payment of VAT and that the services rendered thereto by a VAT-registered entity are effectively zero-rated, *viz*:

"Petitioner's sales to NPC are effectively zero-rated.

As aptly ruled by the CTA Special Second Division, petitioner's sales to NPC are effectively subject to zero percent (0%) VAT. **The NPC is an entity with a special charter, which categorically exempts it from the payment of any tax, whether direct or indirect, including VAT. Thus, services rendered to NPC by a VAT-registered entity are effectively zero-rated.** In fact, the BIR itself approved the application for zero-rating on 29 December 2004, filed by petitioner for its sales to NPC covering January to October 2005. As a consequence, petitioner claims for the refund of the alleged excess input tax attributable to its effectively zero-rated sales to NPC." (*Boldfacing supplied*)

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[53] G.R. No. 88291, June 8, 1993.
[54] G.R. Nos. 198729-30, January 15, 2014.

In *Toledo,*[55] the Supreme Court affirmed TPC's entitlement for refund of its claimed unutilized input tax attributable to sales of electricity to NPC pursuant to Section 108 (B)(3) of the NIRC of 1997, as amended in relation to the NPC Charter, *viz*:

> "**Now, as to the validity of TPC's claim, there is no question that TPC is entitled to a refund or credit of its unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the taxable year 2002 pursuant to Section 108 (B) (3) of the NIRC, as amended, in relation to Section 13 of the Revised Charter of the NPC, as amended.** Hence, the only issue to be resolved is whether TPC is entitled to a refund of its unutilized input VAT attributable to its sales of electricity to CEBECO, ACMDC, and AFC." (*Boldfacing supplied*)

Indubitably, since NPC is exempt from the payment of all taxes, including VAT, respondent should be allowed to claim a refund or credit of its unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the period January 1, 2005 to October 31, 2005 pursuant to Section 108 (B)(3) of the NIRC of 1997, as amended, albeit the absence of respondent's COC.

With regard to petitioner's argument that respondent filed its judicial claim prematurely as it did not exhaust administrative remedies when it failed to submit complete supporting documents for its administrative claim, the Court finds the same bereft of merit.

In *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual Corporation)*,[56] the submission of documents enumerated in RMO No. 53-98 is not a requirement for a grant of refund of input tax. It is merely a checklist of documents to be submitted by the taxpayer in relation to an audit of tax liabilities, to wit:

> "The CIR, however, insists that TSC failed to submit the complete documents enumerated in RMO 53-98. Thus, the 120-day period given for it to decide allegedly did not commence.
>
> The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities x x x." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by

[55] Supra note 46.
[56] G.R. No. 205055, July 18, 2014.

the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable.'"

In the same case, the Supreme Court opined that the Commissioner of Internal Revenue should notify the taxpayer if it failed to submit complete documents, *viz:*

"Moreover, if TSC indeed failed to submit the complete documents in support of its application, **the CIR could have informed TSC of its failure**, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition." (*Boldfacing supplied*)

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[57], the Supreme Court highlights the CIR's authority to require additional documents necessary to decide on a taxpayer's claim for refund of input tax vis-à-vis the consequence of the CIR's failure to inform a taxpayer about the need to submit additional documents, *viz*:

"To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.

xxx *First,* the 120-day period had commenced to run and the 120+30 day period was, in fact, complied with. As already discussed, **it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120- day period. It must again be pointed out that *this in no way precludes the CIR from requiring additional documents necessary to decide the claim, or even denying the claim if the taxpayer fails to submit the additional documents requested.***

Second, the CIR **sent no written notice informing Total Gas that the documents were incomplete or required it to submit additional documents.** As stated above, such notice by way of a

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[57] G.R. No. 207112, December 8, 2015.

> written request is required by the CIR to be sent to Total Gas. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, **by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents.**' (*Emphases supplied*)

Upon perusal of the records, there is no showing that the CIR sent a written notice requiring respondent to submit additional documents -- a process that is indispensable in computing the 120+30 day period. Thus, petitioner could no longer validly argue that the judicial claim was premature on account of alleged non-submission of complete documents as it is petitioner himself who fails to inform respondent about the need to submit additional documents in the administrative level.

WHEREFORE, in light of the foregoing, petitioner Commissioner of Internal Revenue's *Petition for Review* is **DENIED**. The assailed Resolutions dated May 29, 2015 and September 9, 2015 reinstating the July 13, 2010 Decision of the Court Special First Division in CTA Case No. 7617 are **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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