REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

HEDCOR SABANGAN, INC., *Petitioner,*	**CTA *EB* NO. 2085** *(CTA Case No.9276)*
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 02 2020 3:16 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition")[1] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals***[2] ("RRCTA"), seeking the reversal and setting aside of the Decision,[3] dated 20 November 2018, and the Resolution,[4] dated 30 May 2019, promulgated by the Court of Tax Appeals ("CTA") Special Second Division ("Court in Division"); and praying for the Court *En Banc* to render judgment ordering respondent to refund or to issue a tax credit certificate ("TCC") in favor of petitioner for its unutilized input Value Added Taxes ("VAT") in the amount of Php12,940,493.14, or in the alternative, grant a Motion for New Trial.[5]

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[1] See Petition, Records, Vol. 1, pp. 44-127, with annexes.
[2] *A.M. No. 05-11-07-CTA*, November 22, 2005.
[3] Annex "O" of the Petition, Records, Vol. 1, pp. 131-150.
[4] Annex "B" of the Petition, *id.*, at pp. 117-127.
[5] See Prayer in the Petition, *id.*, at p. 26.

The Parties

Petitioner, **HEDCOR SABANGAN, INC.**, is a domestic corporation with principal office at Brgy. Namatec, Sabangan, Mountain Province. Its primary purpose is "to engage in the business of owning, developing, constructing, operating, repairing, and maintain of hydroelectric power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partners or investors in the business of developing, operating and/or owning power generation plants and/or converting stations."[6]

Respondent, **COMMISSIONER OF INTERNAL REVENUE ("CIR")**, is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") empowered to perform the duties of said office, including the power 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.

The Facts

Petitioner is authorized by the Energy Regulatory Commission ("ERC") to operate facilities used in the generation of electricity, as evidenced by Certificate of Compliance ("COC") No. 15-09-M-000231[7] issued by the ERC on 29 September 2015 covering the 14-megawatt (MW) hydropower plant located in Sabangan, Mountain Province.

It is registered with the BIR as a VAT taxpayer as evidenced by its *Certificate of Registration* bearing Taxpayer Identification No. 409-507-988-000.[8]

On 11 August 2015, petitioner wrote to Assistant Commissioner for Large Taxpayers Service Nestor S. Valeroso requesting a refund of excess and unutilized input VAT refund covering the period from the 2nd Quarter of CY 2013 to the 2nd Quarter of CY 2015, in the total amount of Php172,204,443.96, which included the amount of Php12,940,493.14 arising from its purchases made during the 2nd Quarter of CY 2013.[9] On 30 September 2015, petitioner subsequently filed its Application for Tax Credit (BIR Form No. 1914).[10]

On 27 January 2016, petitioner's claim for input VAT refund was partially granted by the BIR in the amount of Php157,635,185.58.

[6] See Annex "B" of the Petition, *id.*, at p. 37.
[7] See Annex "C" of the Petition, *id.*, at p. 63.
[8] See Annex "E" of the Petition, *id.*, at p. 70.
[9] See Annex "I" of the Petition, *id.*, at pp. 76-78.
[10] See Annex "J" of the Petition, *id.*, at p. 79.

On 24 February 2016, petitioner filed its judicial claim appealing the partial denial of its claim for input VAT refund.[11] Petitioner sought the refund or issuance of a TCC in the aggregate amount of Php12,940,493.14, which represents its unutilized input VAT for the 2nd Quarter of CY 2013.

On 20 November 2018, the Court in Division rendered the Assailed Decision, the dispositive portion of which provides, as follows:[12]

> "**WHEREFORE,** premises considered, petitioner's claim for refund for alleged excess input VAT attributable to zero-rated or effectively zero-rated sales incurred during the second quarter of 2013 is hereby **DENIED** for lack of merit."

On 30 May 2019, the Court in Division issued the Assailed Resolution denying petitioner's Motion for Reconsideration.[13]

As a result of the denial of its judicial claim, petitioner filed a Motion for Extension of Time to File Petition for Review,[14] which was granted by this Court in a Resolution, dated 20 June 2019.[15]

On 4 July 2019, petitioner filed the instant Petition.[16]

In a Resolution, dated 12 July 2019, this Court ordered respondent to file a Comment on the Petition,[17] which was complied with by respondent on 24 July 2019.[18] On 9 August 2019, this Court resolved to give due course to the Petition, and directed the parties to file their respective memoranda.[19]

On 9 August 2019, petitioner filed a Motion for Extension of Time to File Reply via registered mail,[20] and on 19 August 2019, petitioner filed such Reply (Re: Comment dated July 24, 2019) via registered mail.[21]

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[11] See Petition, *id.*, at p. 9.
[12] See Annex "O" of Petition, *id.*, at p. 149.
[13] See Annex "P" of Petition, *id.*, at p.157.
[14] *Id.*, at pp. 1-4.
[15] *Id.*, at p. 5.
[16] *Id.*, at p. 6.
[17] *Id.*, at pp. 158-160.
[18] See Comment (Re: Petition for Review), *id.*, at pp. 161-177.
[19] *Id.*, at pp. 178-180.
[20] *Id.*, at pp. 181-186.
[21] *Id.*, at pp. 187-195.

On 30 August 2019, respondent filed a Manifestation manifesting that he is adopting the arguments raised in his Comment (Re: Petition for Review),[22] which was noted by this Court in a Resolution, dated 6 September 2019.[23]

In a Resolution, dated 12 September 2019, this Court granted petitioner's Motion for Extension of Time to File Reply via registered mail and noted petitioner's Reply (Re: Comment dated July 24, 2019).[24]

On 20 September 2019, petitioner filed a Motion for Extension of Time to File Memorandum,[25] which was granted by this Court in a Resolution, dated 24 September 2019.[26]

On 7 October 2019, petitioner filed its Memorandum.[27]

Accordingly, in a Resolution, dated 6 November 2019, this case was submitted for Decision.[28]

Hence, this Decision.

The Assigned Errors[29]

I.

> Whether the Court in Division erred when it ruled that a COC issued by the ERC is a requirement for a taxpayer to be entitled to a tax refund or issuance of TCC for unutilized excess input VAT;

II.

> Whether petitioner has legal bases to claim for input VAT refund or tax credit; and

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[22] *Id.*, at pp. 196-199.
[23] *Id.*, at p. 200.
[24] *Id.*, at p. 201-204.
[25] *Id.*, at pp. 205-207.
[26] *Id.*, at p. 208.
[27] *Id.*, at p. 220-245.
[28] *Id.*, at pp. 246-248.
[29] See Issues in the Petition, *id.*, at p. 12.

III.

Whether the Court in Division erred in denying petitioner's Motion for New Trial for submission of additional evidence

Arguments of the Parties

Petitioner's Arguments[30]

The COC is not required to prove that petitioner is engaged in the sale of power generated through renewable sources of energy. ***Republic Act No. 9136 or the Electric Power Industry Reform Act Law ("EPIRA Law")***, and its implementing rules and regulations, does not list the COC as a requirement for entitlement to VAT zero-rating on sales of power generated from renewable energy sources. Furthermore, the EPIRA Law does not cover the procedure for claiming VAT refund.

Petitioner's claim for refund is based on ***Section 108 (B) (7) of the Tax Code***, which does not require a COC for a renewable energy generator's entitlement for VAT zero-rating. The COC prescribed under the ***EPIRA Law*** is required of all power generators, regardless of the source of energy produced. It could not have been the basis for the VAT zero-rating of the "sales of power or fuel generated through renewable sources of energy" which is granted to entities producing power from renewable energy sources only pursuant to ***Section 108 (B) (7) of the Tax Code***.

In ***Team Energy Corporation v. Commissioner of Internal Revenue ("Team Energy Case")***,[31] the Supreme Court held that since petitioner's claim for unutilized or excess input VAT was not anchored under the ***EPIRA Law,*** then the requirement of the said law on the submission of COC does not apply. The Court in Division improperly relied on ***Commissioner of Internal Revenue v. Toledo Power Company ("Toledo Power Case")***,[32] which is inapplicable to the case at bar since the said case involved the sale of electricity clearly contemplated by the ***EPIRA Law*** and not sales of electricity generated from renewable energy sources, the VAT consequences of which are governed by the ***Tax Code*** in relation to ***Republic Act No. 9513 or the Renewable Energy Act of 2008 ("RE Law")***.

The ERC Guidelines on Issuance of COC allows the operation of a generation plant without a COC for purposes of commissioning. Under ***Resolution No. 16 Series of 2014, Adopting the 2014 Revised Rules for the***

[30] See petitioner's Arguments in the Memorandum, *id.*, at pp. 226-240.
[31] G.R. No. 197663, 14 March 2018.
[32] G.R. No. 196415, 2 December 2015.

Issuance of Certificates of Compliance (COCs) for Generation Companies, Qualified End-Users and Entities with Self-Generation Facilities ("Resolution 16-14"), generation companies are permitted to generate sales during the testing and commissioning of its facilities.

Moreover, ***Article III, Section I of Resolution 16-14*** states that once a generation facility applies for the issuance of a COC, the ERC has a period of sixty (60) calendar days from the submission of complete supporting documents within which to issue the COC. In which case, if no COC has yet been issued within said period, the application shall be deemed provisionally approved. Considering that petitioner filed for a COC before the ERC Licensing and Monitoring Division on 25 November 2014, the same became provisionally approved as early as 24 January 2015. Hence, petitioner already had the requisite ERC approval when the zero-rated sales of electricity were made during the 2nd quarter of CY 2015. This, despite the fact that the actual COC was issued only on 29 September 2015.

A new trial for the purpose of presenting the COC is proper under the circumstance. The *sine qua non* character of the COC was never raised as an issue in the pleadings. Petitioner could not have reasonably predicted that the alleged lack of COC would become a material issue that could determine the outcome of the case.

Petitioner's unutilized input tax is attributable to zero-rated sales. In relation to this, and as confirmed by the ICPA Report, petitioner submitted complete documents to support its claim for input VAT refund. Hence, the amount of Php12,940,943.14 should be refunded as input VAT attributable to zero-rated sales.

Respondent's Arguments[33]

All claims for tax refund, which are in the nature of tax exemptions, must be construed in *strictissimi juris* against the claimant. Hence, petitioner must prove that it is entitled to the refund sought.

The Court in Division correctly ruled in denying the input VAT refund on the basis that petitioner's COC was issued only after the alleged zero-rated sales were made.

New trial cannot be conducted in the case at bar considering that the COC, the document sought to be presented, is neither newly discovered or inadvertently omitted due to fraud, accident, mistake, or excusable negligence

[33] See respondent's Arguments in the Comment, Records, Vol. I pp. 290-295.

which merit a reopening of the case. Further, petitioner was already given more than ample opportunity to properly ventilate its case.

The Ruling of the Court En Banc

The instant Petition lacks merit.

A COC from the ERC is an indispensable requirement for generation companies to claim input VAT refund.

In the ***Toledo Power Case***, the Supreme Court had the occasion to rule that a COC is indispensable in proving a generation company's entitlement to an input VAT refund, as follows:

> "Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4(x) of the same law states that a generation company 'refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity.' Corollarily, to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation.
>
> In this case, TPC failed to present a COC from the ERC during the trial. On partial reconsideration, TPC argued that there was no need for it to present a COC because the parties already stipulated in the JSFI that TPC is a generation company and that it became entitled to the rights under the EPIRA when it filed its application with the ERC on June 20, 2002.
>
> We find the arguments raised by TPC unavailing.
>
> 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.

At this point, a distinction must be made between a generation facility and a generation company. A generation facility is defined under the EPIRA Rules and Regulations as 'a facility for the production of electricity.' While a generation company, as previously mentioned, 'refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity.' Based on the foregoing definitions, what differentiates a generation facility from a generation company is that the latter is authorized by the ERC to operate, as evidenced by a COC.

Under the EPIRA, all new generation companies and existing generation facilities are required to obtain a COC from the ERC. New generation companies must show that they have complied with the requirements, standards, and guidelines of the ERC before they can operate. As for existing generation facilities, they must submit to the ERC an application for a COC together with the required documents within ninety (90) days from the effectivity of the EPIRA Rules and Regulations. Based on the documents submitted, the ERC will determine whether the applicant has complied with the standards and requirements for operating a generation company. If the applicant is found compliant, only then will the ERC issue a COC.

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."

As explained above, a COC is proof that a generation facility, or a facility that produces electricity, is authorized by the ERC to engage in the generation of electricity. A COC converts a generation facility into a generation company, the entity under ***Section 6 of the EPIRA Law*** that is entitled to a VAT zero-rating of its sales of electricity, *viz*:

> "**Section 6.** *Generation Sector.* - Generation of electric power shall be competitive and open.
>
> Upon the effectivity of this Act, **any new generation company shall, before it operates, secure from the Energy Regulatory Commission 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.
>
> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a local or national franchise.
>
> Upon implementation of retail competition and open access, the prices charged by a generation company for supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act
>
> **Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by <u>generation companies</u> shall be value added tax zero-rated.**
>
> The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their individual pricing formulas as well as their financial statements."
> (Emphasis and Underscoring, Ours)

Thus, the importance of a COC cannot be underscored. For without it, there can be no proof that a generation facility is authorized by the ERC to generate electricity, which is a primordial requirement to be entitled to VAT zero-rating of sales of electricity under the ***EPIRA Law.***

Petitioner posits that the ***Toledo Power Case*** is irrelevant to its claim for input VAT refund as the said case involved the ***EPIRA Law***, which is not applicable to generation of electricity from renewable energy sources. In such instances, the applicable law for VAT refund claims is the ***Tax Code*** in relation to the ***RE Law.*** This is misplaced.

The ***EPIRA Law*** does not distinguish. It applies to all types of generation companies including those that produce electricity from renewable energy sources. In fact, one of its declared policies is "[t]o promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy."[34] Therefore, following the pronouncement in the ***Toledo Power Case***, a generation company, regardless of the manner by which it produces electricity, whether it be from fossil fuels or renewable energy sources, should obtain a COC before it can be allowed to operate and be entitled to VAT zero-rating of its sales of electricity.

It is undisputed that the ERC issued a COC to petitioner only on 29 September 2015. Meanwhile, the present Petition involves alleged zero-rated sales of electricity consummated during the 2nd Quarter of CY 2015. As such, these sales were made while petitioner was not yet in possession of a COC.

Applying both law and jurisprudence, therefore, petitioner is not entitled to a claim for input VAT refund as it did not possess the requisite COC when the sales of electricity were made. Without the COC, the sales of electricity during the 2nd Quarter of CY 2015 did not qualify as zero-rated sales under ***Section 6 of the EPIRA Law***. This, despite the fact that the COC application had been filed with the ERC before engaging in the sale of electricity. The ***Toledo Power Case*** expressly ruled that "being engaged in the business of power generation does not make a corporation a generation company under the ***EPIRA Law***. Neither did the filing of an application for COC with the ERC automatically entitle a corporation to the rights of a generation company. Under the ***EPIRA Law***, all new generation companies and existing generation facilities are required to obtain a COC from the ERC."[35]

While ***Resolution 16-14*** permits the sale of electricity during the testing and commissioning phase of the generation facilities and grants a provisional authority to operate pending the approval of the COC application by the ERC, the same does not specifically grant VAT zero-rating of the sales made during these instances. At most, ***Resolution 16-14*** allows generation companies to sell the electricity generated during these instances without fear of reprisal from the ERC. qv

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[34] Section 2(h).
[35] Hedcor Sibulan, Inc. v. Commissioner of Internal Revenue, CTA EB No. 1751, CTA Case No. 8014, 9 October 2019.

<u>Assuming that petitioner is a Registered Renewable Energy Developer, it is not allowed to claim input VAT refund.</u>

Petitioner asserts that its claim for refund is anchored on the ***RE Law*** as it generates electricity through renewable resources. Hence, applying the ruling in the ***Team Energy Case***, there is no need to present its COC to prove its entitlement to an input VAT refund as its claim is not based on the ***EPIRA Law.*** This argument, however, weakens petitioner's own case.

As petitioner is in the business of power generation from a hydroelectric power plant, it is considered as a Renewable Energy Developer ("RE Developer") which is defined under ***Section 4 (pp) of the RE Law*** as referring "to individual/s or a group of individuals formed in accordance with existing Philippine Laws engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities."

Section 15 of the RE Law provides that Department of Energy ("DOE") Registered RE Developers are entitled to VAT zero-rating of both its sales of electricity generated from renewable energy and local purchases of goods, properties, and services, as follows:

> "**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, Ours)

As provided, a DOE Registered RE Developer's local purchases of goods, properties, and services necessary for the development, construction, and installation of its plant facilities and incurred in the whole process of exploring and developing renewable energy sources up to its conversion into power are VAT zero-rated. Consequently, its local suppliers of goods, properties, and services cannot pass on VAT on its purchases. Accordingly, a DOE Registered RE Developer cannot claim input VAT refund on its purchases as no VAT should have been passed on to it in the first place by its local suppliers. In any case, if VAT was indeed passed on to it by its suppliers, petitioner's sole recourse is to demand reimbursement of the VAT component of its purchases from said suppliers.[36]

To summarize, assuming arguendo that petitioner was a DOE Registered RE Developer at the time the 2nd Quarter of CY 2015 sales were made, petitioner would then be disqualified to claim input VAT refund on the local purchases it made considering that no VAT should have been passed on to it in the first place. Petitioner's sole recourse would be to demand reimbursement from its local suppliers for the VAT it paid on its purchases.

New trial is unavailing in the present Petition.

As to petitioner's request for a new trial to present additional evidence, we find the same to be without merit.

Elementary is the rule that a Motion for New Trial can only be granted upon specific, well-defined grounds, set forth in the Rules of Court.[37] ***Sections 1 and 2, Rule 37 of the Rules of Court*** provide, as follows:

> "Section 1. Grounds of and period for filing motion for new trial or reconsideration. - Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party

[36] Coral Bay Nickel Corporation v. Commissioner of Internal Revenue, G.R. No. 190506, 13 June 2016.
[37] Reynante Tadeja, Ricky Tadeja, Ricardo Tadeja and Ferdinand Tadeja vs. People of the Philippines, G.R. No. 145336, 20 February 2013.

> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.
>
> Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.
>
> Section 2. Contents of motion for new trial or reconsideration and notice thereof.- The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party. A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.
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> xxx xxx xxx
>
> A pro forma motion for new trial or reconsideration shall not toll the reglementary period of appeal."

In relation to this, ***Sections 5 and 6 of the Revised Rules of the Court of Tax Appeals*** state that:

> "SEC. 5. Grounds of motion for new trial. - A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result. A motion for new trial shall include all grounds then available and those not included shall be deemed waived.

> SEC. 6. Contents of motion for reconsideration or new trial and notice.- The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.
>
> A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.
>
> A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed pro forma, which shall not toll the reglementary period for appeal."

From the foregoing, it can be seen that the rules allow the filing of a motion for new trial on the grounds of fraud, accident, mistake, or excusable negligence; or of newly discovered evidence, in the manner provided for proof of motions.

An examination of the request for new trial by petitioner shows that the same is not based on fraud, accident, mistake or excusable negligence; or of newly discovered evidence. We agree with respondent that petitioner has already been given ample opportunity to present all evidence necessary to support its claim for input VAT refund.

In fact, petitioner had already presented the document determinative of this case, the COC. Petitioner's main purpose for requesting a new trial is to present circumstantial evidence which would show that it was already authorized by the ERC to generate electricity during the second quarter of CY 2015, the period when the alleged zero-rated sales were made. This, however, will not help petitioner's cause and is a futile effort as the very document required by law as proof of its authority to generate electricity, the COC, has already been presented and offered before the Court in Division.

Unfortunately, for petitioner, the COC was issued on 29 September 2015 while the alleged zero-rated sales occurred during the 2nd Quarter of CY 2015. This only proves that petitioner was not yet authorized by the ERC to operate its generation facility during this period, leading to the conclusion that petitioner is not entitled to VAT zero-rating on said sales.

WHEREFORE, the instant Petition for Review filed by petitioner, **HEDCOR SABANGAN, INC.**, is hereby **DENIED** for lack of merit. Accordingly, the Decision, dated 20 November 2018 and the Resolution, dated 30 May 2019, are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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