REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC., Petitioner,	**CTA CASE NOS. 9208 & 9274**
	Members:
- versus -	**UY,** *Chairperson* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 24 2020 2:26 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This is a consolidated *Petitions for Review* filed by Petitioner Philippine Geothermal Production Company, Inc. against Respondent Commissioner of Internal Revenue. The separate cases were filed on November 27, 2015 (CTA Case No. 9208) and February 24, 2016 (CTA Case No. 9274), respectively. Petitioner prays for the refund or issuance of a tax credit certificate (TCC) of its unutilized input value-added tax ("VAT") allegedly attributable to its zero-rated sales/receipts for the second and third quarters of taxable year ("TY") 2013 in the amounts of Php21,273,419.41 and Php9,156,798.48, respectively, or in the aggregate amount of Php30,430,217.89.[1]

[1] Docket (CTA Case No. 9208), Pre-Trial Order dated June 29, 2016, Summary of the Case, pp. 1046 to 1047; Petitioner's Memorandum, Nature of the Case, p. 2327 vis-à-vis Respondent's Memorandum, Statement of the Case, p. 2310.

The Parties

Petitioner Philippine Geothermal Production Company, Inc. is a domestic corporation duly organized and existing under Philippine laws, with office address at 14th Floor, 6750 Ayala Avenue, Makati City.[2] It is registered with the Securities and Exchange Commission ("SEC") under SEC Company Registration No. A200115701 on October 16, 2001.[3] Likewise, it is a VAT-registered entity, as evidenced by Bureau of Internal Revenue ("BIR") Certificate of Registration No. OCN 8R0000038356 issued on October 30, 2001, with Tax Identification No. (TIN) 214-127-981-000.[4]

Petitioner is represented by its counsel Du-Baladad & Associates with office address at the 20th Floor, Chatham House Rufino corner Valero Streets, Salcedo Village, Makati City where it may be served with notices and other processes of this Court.[5]

Respondent, Commissioner of Internal Revenue, is the chief of the BIR, the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith. He may be served with summons, notices and other court processes at the BIR National Office Building, Diliman, Quezon City.[6]

The Facts

On June 30, 2015, Petitioner filed with the Large Taxpayers Excise Audit Division I of the BIR its administrative claim for refund and its *Application for Tax Credits or Refunds* (BIR Form No. 1914) covering its unutilized input taxes for the second quarter of TY 2013 in the total amount of Php21,273,419.41, pursuant to Sections 112(A) and 108(B)(7) of the National Internal Revenue Code ("NIRC") of 1997, as amended, and as implemented by Section 4.108-5(b)(7) of Revenue Regulations ("RR") No. 16-2005 ("first administrative claim").[7]

Likewise, on September 30, 2015, Petitioner filed its *Application for Tax Credits or Refunds* (BIR Form No. 1914) covering its unutilized input taxes for the

[2] *Id.*, Parties, Petition for Review, p. 10.
[3] *Id.*, Exhibit "P-1", pp. 1634 to 1650.
[4] *Id.*, Exhibit "P-4", p. 1671.
[5] *Id.*, Joint Stipulation of Facts and Issues (JSFI), Summary of Admitted Facts, Par. 2, p. 1028.
[6] *Id.*, JSFI, Summary of Admitted Facts, Par. 1, p. 1028.
[7] *Id.*, JSFI, Summary of Admitted Facts, Par. 3, p. 1029; Exhibits "P-21" and "P-22", pp. 1765 to 1772.

third quarter of TY 2013 in the total amount of Php9,156,798.48 ("second administrative claim").[8]

However, on November 05, 2015, Petitioner received a letter from the BIR denying its claim for VAT refund for the second quarter of TY 2013.[9]

Another letter was received by Petitioner on March 04, 2016, denying its claim for VAT refund for the third quarter of TY 2013.[10]

Petitioner filed before this Court the Petition for Review for the first administrative claim on November 27, 2015, docketed as CTA Case No. 9208;[11] while the Petition for Review for the second administrative claim was filed on February 24, 2016, docketed as CTA Case No. 9274.[12]

On February 01, 2016, Respondent filed his *Answer*[13] for CTA Case No. 9208, interposing the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

5. On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, Respondent respectfully alleges as her defense that:

Claims for refund are construed strictly against the taxpayer and in favor of the Government

6. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the lifeblood of the government.' And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken.

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8 *Id.*, JSFI, Summary of Admitted Facts, Par. 5, p. 1029; Exhibits "P-23" to "P-24", pp. 1773 to 1781.

9 *Id.*, JSFI, Summary of Admitted Facts, Par. 4, p. 1029; Exhibit "P-60", Pars. 33 to 35 p. 888; Exhibit "45", p. 1800.

10 *Id.*, JSFI, Summary of Admitted Facts, Par. 6, p. 1029; Exhibit "P-60", Pars. 33 to 35, p. 888; Exhibit "46", p. 1801.

11 *Id.*, pp. 10 to 23.

12 Docket (CTA Case No. 9274), pp. 10 to 27.

13 Docket (CTA Case No. 9208), pp. 68 to 75.

Else wise stated, taxation is the rule, exemption therefrom is the exception.

7. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.

Petitioner's claim for refund was denied for its failure to present certified true copy of Quarterly VAT Return corresponding to the period of claim showing that the amount of TCC/Refund being claimed was deducted from available Input Tax.

8. The instant claim was properly denied through a letter dated November 5, 2015 and served to Petitioner on the same date.

9. In order to be entitled to a refund or issuance of TCC of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, Petitioner must prove compliance with the following requisites:

1) that there must zero-rated or effectively zero-rated sales;
2) that input taxes were incurred or paid;
3) that such input taxes are directly attributable to zero-rated or effectively zero-rated sales;
4) that input taxes were not applied against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period

10. RMC 54-2014 clarifies issues relative to the application for Value-Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code. Accordingly, one of the general requirements for the claim to prosper is the Quarterly VAT Return corresponding to the period of claim showing that the amount of TCC/Refund being claimed was deducted from available input tax as well as the VAT Returns for the succeeding quarters.

11. In accordance with the above requirements VAT Return for the succeeding quarter must be presented to prove that the input taxes were not applied against any output taxes during and in the succeeding quarters.

12. As pointed in the Letter of Denial dated November 5, 2015, Petitioner's claim for refund was denied for its failure to present certified true copy of Quarterly VAT Return corresponding to the period of claim showing that the amount of TCC/Refund being claimed was deducted from available Input Tax, pertinent portion of which reads:

> Verification disclosed that your Application for Tax Credits/Refund (BIR Form No. 1914) reflected a total claim for refund or tax credits of input tax in the amount of **Php21,273,419.41**. However, at the time of submission of documents you have failed to comply with the requirements of Revenue Memorandum Circular No. 54-2014, particularly Annex–A, General Requirement No. 2.3 which is the ***'Certified true copy of Quarterly VAT Return corresponding to the period of claim showing that the amount of TCC/Refund being claimed was deducted from available Input Tax'.***
>
> It was noted that the amount being claimed for VAT Refund/Credit amounting to Php21,273,419.41 was not reflected as a deduction from the total available input tax as of June 30, 2015, the time of filing of the Application for Tax Credits/Refund.
>
> Failure to submit the aforementioned document is a valid ground for denial of your application of VAT Input Refund. It is clearly stipulated in **RMC No 54-2014** that, 'the application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete documents'.

13. Petitioner, knowing the importance of the document required under RMC 54-2015, failed to present the same in the administrative level, resulting in the denial of the claimed refund.

14. Petitioner merely mentioned in passing that the amount of Php21,273,419.41 for the second quarter of 2013 have been paid and have not been applied against output taxes during and in the succeeding quarters.

15. Such allegation is a mere self-serving not supported by any concrete evidence.

16. Contrary to Petitioner's claim, Respondent noted that the amount claimed for VAT Refund/Credit amounting to Php21,273,419.41 was not reflected as a deduction from the total available input tax as of June 30, 2015, the time of filing of the application for tax credits/refund.

17. The claim for refund was properly denied for its patent failure to present Quarterly VAT Return corresponding to the period of claim showing that the amount of TCC/Refund being claimed was deducted from available input tax as well as the VAT Returns for the succeeding quarters.

18. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

19. To reiterate, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

Meanwhile, for CTA Case No. 9274, Respondent alleged the following special and affirmative defenses in his *Answer* filed on April 29, 2016,[14] to wit:

[14] Docket (CTA Case No. 9274), Answer, pp. 76 to 82.

"5. On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, Respondent respectfully alleges as her defense that:

Claims for refund are construed strictly against the taxpayer and in favor of the Government.

6. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the lifeblood of the government.' And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.

7. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.

Petitioner's claim for refund was denied for its failure to present certified true copy of Quarterly VAT Return corresponding to the period of claim showing that the amount of TCC/Refund being claimed was deducted from available Input Tax.

8. The instant claim was properly denied through a letter dated February 24, 2016 and served to Petitioner on March 3, 2016.

9. In order to be entitled to a refund or issuance of a TCC of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, Petitioner must prove compliance with the following requisites:

1) that there must be zero-rated or effectively zero-rated sales,

2) that input taxes were incurred or paid;
3) that such input taxes are directly attributable to zero-rated or effectively zero-rated sales;
4) that input taxes were not applied against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period

10. RMC 54-2014 clarifies issues relative to the application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code. Accordingly, one of the general requirements for the claim to prosper is the Quarterly VAT Return corresponding to the period of claim showing that the amount of TCC/Refund being claimed was deducted from available input tax as well as the VAT Returns for the succeeding quarters.

11. In accordance with the above requirements VAT Return for the succeeding quarter must be presented to prove that the input taxes were not applied against any output taxes during and in the succeeding quarters.

12. As pointed in the Letter of Denial dated February 24, 2016, Petitioner's claim for refund was denied for its failure to present certified true copy of Quarterly VAT Return corresponding to the period of claim showing that the amount of TCC/Refund being claimed was deducted from available Input Tax, pertinent portion of which reads:

> Verification disclosed that your Application for Tax Credits/Refund (BIR Form No. 1914) reflected a total claim for refund or tax credits of input tax in the amount of **Php9,156,798.48**. However, at the time of submission of documents you have failed to comply with the requirements of Revenue Memorandum Circular No. 54-2014, particularly Annex-A, General Requirement No. 2.3 which is the ***'Certified true copy of Quarterly VAT Return corresponding to the period of claim showing that the amount of TCC/Refund being claimed was deducted from available Input Tax'***.
>
> It was noted that the amount claimed for VAT Refund/Credit amounting to Php9,156,798.48 was not reflected as a deduction from the total available input tax as

> of September 30, 2015, the time of filing of the Application for Tax Credits/Refund.
>
> Failure to submit the aforementioned document is a valid ground for denial of your application of VAT Input Refund. It is clearly stipulated in **RMC No. 54-2014** that, 'the application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete documents.'

13. Petitioner, knowing the importance of the document required under RMC 54-2015, failed to present the same in the administrative level, resulting in the denial of the claimed refund.

14. Petitioner merely mentioned in passing that the amount of Php9,156,798.48 for the third quarter of 2013 have been paid and have not been applied against output taxes during and in the succeeding quarters.

15. Such allegation is a mere self-serving not supported by any concrete evidence.

16. Contrary to Petitioner's claim, Respondent noted that the amount claimed for VAT Refund/Credit amounting to Php9,156,798.48 was not reflected as a deduction from the total available input tax as of September 30, 2015, the time of filing of the application for tax credits/refund.

17. The claim for refund was properly denied for its patent failure to present Quarterly VAT Return corresponding to the period of claim showing that the amount of TCC/Refund being claimed was deducted from available input tax as well as the VAT Returns for the succeeding quarters.

18. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

> 19. To reiterate, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

Meanwhile, the pre-trial conference for CTA Case No. 9208 was set and held on April 19, 2016.[15]

Thereafter, *Respondent's Pre-Trial Brief* for CTA Case No. 9208 was filed through private courier on April 13, 2016,[16] while Petitioner's *Pre-Trial Brief* for CTA Case No. 9208 was submitted on April 14, 2016.[17]

Meanwhile, on April 13, 2016, Respondent submitted the *BIR Records* for CTA Case No. 9208.[18]

Petitioner subsequently filed a *Motion to Consolidate* CTA Case No. 9208 with CTA Case No. 9274 on April 14, 2016.[19]

At the hearing held on April 19, 2016, the Court (1) granted Petitioner's Motion to Consolidate; (2) consolidated CTA Case No. 9274 with CTA Case No. 9208, the case bearing the lower docket; (3) reset the pre-trial conference to May 31, 2016; (4) ordered parties to submit their Consolidated Pre-Trial Briefs at least five (5) days before May 31, 2016; and (6) granted Respondent a period of ten (10) days, or until April 29, 2016 to file his Consolidated Answer for CTA Case Nos. 9208 and 9274.[20]

On May 24, 2016, Respondent submitted the *BIR Records* for CTA Case No. 9274.[21]

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[15] Docket (CTA Case No. 9208), Notice of Pre-trial Conference dated February 03, 2016, pp. 76 to 77; Minutes of the hearing held on April 19, 2016, p. 625.
[16] *Id.*, pp. 103 to 106.
[17] *Id.*, pp. 112 to 122.
[18] *Id.*, pp. 108 to 111.
[19] *Id.*, pp. 123 to 127; Docket (CTA Case No. 9274), pp. 68 to 72.
[20] *Id.*, Minutes of the hearing held on April 19, 2016, p. 625; Resolution dated April 27, 2016, pp. 629 to 630.
[21] *Id.*, Compliance, pp. 633 to 636.

Thereafter, Petitioner filed its *Consolidated Pre-Trial Brief* on May 25, 2016,[22] while Respondent's *Consolidated Pre-Trial Brief (for CTA Case Nos. 9208 & 9274)* was filed through private courier on May 25, 2016.[23]

On May 30, 2016, Respondent filed a *Manifestation* stating that he deemed not necessary to file a consolidated Answer as he already filed his Answer for both cases. As such, he prays that the Answer filed on February 01, 2016 for CTA Case No. 9208 and Answer filed on April 29, 2016 be noted and considered as his Answers for both cases.[24] This Manifestation was noted by the Court in its Order dated June 17, 2016.[25]

Meanwhile, the parties filed their *Joint Stipulation of Facts and Issues* on June 10, 2016.[26] The Court issued a *Pre-Trial Order* on June 29, 2016,[27] thereby terminating the Pre-Trial.

The trial of the case proceeded.

During trial, Petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Atty. Ma. Fe Concepcion L. Guirnalda-Lucero,[28] Legal Counsel and Corporate Secretary of Petitioner; (2) Ms. Rosaluz R. Feliciano,[29] Accounting Supervisor of Petitioner; and (3) Ms. Katherine O. Constantino,[30] the Court-commissioned Independent Certified Public Accountant ("ICPA").

On November 10, 2016, the *ICPA Report* was submitted.[31]

Petitioner filed its *Formal Offer of Evidence* on May 23, 2017.[32] Respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on June 02, 2017.[33] Thus,

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22 *Id.*, pp. 637 to 648.
23 *Id.*, pp. 866 to 872.
24 *Id.*, pp. 1020 to 1023.
25 *Id.*, p. 1039.
26 *Id.*, pp. 1028 to 1035.
27 *Id.*, pp. 1046 to 1053.
28 *Id.*, Exhibit "P-61", Dpp. 655 to 668; Minutes of the hearing held on November 08, 2016, p. 1106.
29 *Id.*, Exhibit "P-60", pp. 878 to 891; Minutes of the hearing held on, and Order dated, October 11, 2016, pp. 1102 and 1104 to 1105, respectively.
30 *Id.*, Oath of Commission dated October 11, 2016, p. 1103; Minutes of the hearing held on, and Order dated, October 11, 2016, pp. 1102 and 1104 to 1105, respectively; Exhibit "P-62", pp. 1551 to 1585; Minutes of the hearing held on, and Order dated, January 30, 2017, pp. 1586 to 1588.
31 *Id.*, Exhibit "P-80", pp. 1110 to 1133.
32 *Id.*, pp. 1618 to 1633.
33 *Id.*, pp. 1966 to 1969.

in the Resolution dated December 07, 2017,[34] the Court admitted Petitioner's Exhibits, *except* for Exhibits "P-88" to "P-93", for failure of the exhibits formally offered and identified to correspond with the documents actually marked.

Consequently, Petitioner filed a *Motion for Reconsideration (Re: Resolution Promulgated on December 07, 2017)* on January 8, 2018,[35] praying for the admission of Exhibits "P-88" to "P-93". Respondent filed his *"Comment (Re: Petitioner's Motion for Reconsideration)* on January 26, 2018.[36]

In the Resolution dated March 23, 2018,[37] the Court granted Petitioner's Motion for Reconsideration and admitted Exhibits "P-88" to "P-93".

For his part, Respondent likewise presented his documentary and testimonial evidence. He offered the testimony of his sole witness, Mr. Roque G. Dolairas, Jr., Revenue Officer III.[38]

Respondent's Formal Offer of Evidence was filed on April 13, 2018.[39] Petitioner filed its *Comment (with Motion to Present Rebuttal Evidence)* on April 30, 2018.[40] Thus, in the Resolution dated July 16, 2018,[41] the Court admitted Respondent's Exhibits.

On October 19, 2018, Petitioner filed the *Supplemental Judicial Affidavit of Ms. Rosaluz R. Feliciano*[42] and *Supplemental Judicial Affidavit of Atty. Ma. Fe Concepcion L. Guinalda-Lucero.*[43] Both witnesses were recalled during the hearing held on October 25, 2018.[44]

Thereafter, Petitioner filed its *Supplemental Formal Offer Evidence* on November 20, 2018.[45] No comment was filed thereon by Respondent.[46]

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[34] *Id.*, pp. 1977 to 1978.
[35] *Id.*, pp. 1979 to 1985.
[36] *Id.*, pp. 1994 to 1997.
[37] *Id.*, pp. 2000 to 2001.
[38] *Id.*, Exhibits "R-11", pp. 98 to 102; "R-12", Docket (CTA Case No. 9274), pp. 1015 to 1019; Minutes of the hearing held on, and Order dated, April 3, 2018, Docket (CTA Case No. 9208), pp. 2002 to 2004.
[39] *Id.*, pp. 2005 to 2010.
[40] *Id.*, pp. 2011 to 2015.
[41] *Id.*, pp. 2017 to 2018.
[42] *Id.*, Exhibit "P-63", pp. 2025 to 2033.
[43] *Id.*, Exhibit "P-64", pp. 2070 to 2077.
[44] *Id.*, Minutes of the hearing held on, and Order dated, October 25, 2018, pp. 2156 to 2158.
[45] *Id.*, pp. 2167 to 2175.
[46] *Id.*, Records Verification dated November 29, 2018 issued by the Judicial Records Division of this Court, p. 2287.

In the Resolution dated January 25, 2019,[47] the Court admitted Petitioner's Exhibits, except for Exhibit "P-74", for failure to present the original for comparison.

Subsequently, Respondent filed his *Memorandum* on March 22, 2019,[48] while Petitioner filed its *Memorandum* on May 06, 2019.[49]

Thus, the case was deemed submitted for decision on May 09, 2019.[50]

The Issue

The parties submitted this sole issue[51] for the Court's resolution:

> Whether Petitioner is entitled to a claim for refund of unutilized input taxes attributable to its its zero-rated sales for the second and third quarters of 2013 in the total amount of Php30,430,217.89.

Petitioner's arguments:

Petitioner argues that it is a VAT-registered enterprise; that it is engaged in zero-rated sales; that the input taxes in the amount of Php30,430,217.89 for the second and third quarters of TY 2013 have been paid and have not been applied against output taxes during the same quarters and in the succeeding quarters; that the input taxes being claimed are attributable to its zero-rated sales/receipts; that the claim was filed within two (2) years after the close of the taxable quarter when the input taxes were incurred; and that Petitioner is entitled to a claim for refund of its unutilized input taxes attributable to zero-rated sales for the second and third quarters of TY 2013.

Respondent's counter-arguments:

Respondent counter-argues that Petitioner's claim for refund was denied for its failure to present certified true copy of Quarterly VAT Return corresponding to the period of claim showing that the amount of TCC/Refund being claimed was deducted from available input tax; and that partaking of the

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47 *Id.*, pp. 2298 to 2299.
48 *Id.*, pp. 2310 to 2316.
49 *Id.*, pp. 2327 to 2359.
50 *Id.*, Resolution dated May 09, 2019, p. 236.
51 *Id.*, JSFI, Statement of the Issues, p. 1029.

nature of exemptions, claims for refund are strictly construed against the taxpayer and in favor of the government.

Discussion/Ruling

The instant Petition for Review lacks merit.

Requisites for the grant of a refund or issuance of a tax credit certificate under the law.

Section 112 of the NIRC of 1997, as amended by Republic Act ("RA") No. 9337,[52] provides as follows:

> "SEC. 112. Refunds or Tax Credits of Input Tax. –
>
> (A) Zero-Rated or Effectively Zero-Rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: xxx.
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> xxx xxx xxx

[52] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

(C) Period within which Refund or Tax Credit of Input Taxes shall be Made.— In proper cases, the Commissioner shall grant a refund or issue a tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Pursuant to the above provisions, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

<u>As to the timeliness of the filing of the administrative and judicial claims:</u>

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[53]
2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of one hundred twenty (120) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 120-day period;[54]

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

3. the taxpayer is a VAT-registered person;[55]

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[53] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 182364, August 03, 2010.

[54] *Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.

[55] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue,* G.R. No.

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[56]
5. for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b), and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[57]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[58]
7. the input taxes are due or paid;[59]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[60] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[61]

Petitioner's administrative and judicial claims were timely filed.

The *first* requisite pertains to the filing of the refund claim for tax credit or refund of input VAT before the BIR, within two (2) years from the close of the taxable quarter when the supposed zero-rated or effectively zero-rated sales were made.

180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 03, 2010.

56 *Id.*

57 *Id.*

58 *Id.*

59 *Id.*

60 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009.

61 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 182364, August 03, 2010.

The instant claim covers the second and third quarters of TY 2013 which closed on June 30, 2013 and September 30, 2013, respectively. Counting two (2) years from said dates, Petitioner had until June 30, 2015 and September 30, 2015, respectively, within which to file its administrative claims for issuance of TCC or refund before the BIR.

As shown below, Petitioner's administrative claims for the second and third quarters of TY 2013 were timely filed on June 30, 2015[62] and September 30, 2015,[63] respectively, thus complying with the *first* requisite, to wit:

CTA Case No.	TY 2013	Close of the Taxable Quarter	Last Day to File Adm. Claim	Date of Filing of Adm. Claim
9208	second quarter	June 30, 2013	June 30, 2015	June 30, 2015[64]
9274	third quarter	Sept. 30, 2013	Sept. 30, 2015	Sept. 30, 2015[65]

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from the receipt of Respondent's decision or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended.

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*,[66] the Supreme Court interpreted Section 112 (C) of the 1997 NIRC, as amended, in this wise:

> "Whether Respondent rules in favor of or against the taxpayer - or does not act at all on the administrative claim- within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.
>
> **The judicial claim shall be filed within a period of 30 days after the receipt of Respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner.**

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[62] Docket (CTA Case No. 9208), JSFI, Summary of Admitted Facts, Par. 3, p. 1029; Exhibits "P-21" and "P-22", pp. 1765 to 1772.

[63] *Id.,* JSFI, Summary of Admitted Facts, Par. 5, p. 1029; Exhibits "P-23" to "P-24", pp. 1773 to 1781.

[64] *Id.,* Exhibits "P-21" and "P-22", pp. 1765 to 1772.

[65] *Id.,* Exhibits "P-23" and "P-24", pp. 1773 to 1781.

[66] G.R. No. 182737, March 02, 2016.

> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law, any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA." (Emphasis supplied)

The foregoing ruling was even reiterated by the Supreme Court in the recent case of *Commissioner of Internal Revenue v. Mindanao I Geothermal Partnership*, to *wit*:[67]

> "B. 120+30 Day Period
>
> 1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period."

Based on the foregoing doctrinal pronouncements, the 30-day period provided by law should be reckoned after the receipt of Respondent's decision/ruling within the 120-day period or after the expiration of the 120-day period if the Commissioner does not act on the taxpayer's claim for refund, **whichever is sooner.**

Applying the *verbal legis* import of Section 112(C), records show that Petitioner's administrative claims for the second and third quarters of TY 2013 were respectively filed on June 30, 2015 and September 30, 2015. Thus, Respondent has one hundred twenty (120) days, or until October 28, 2015 and January 28, 2016, within which to decide the same. However, Petitioner received the denial of its claims on November 05, 2015[68] and March 04, 2016[69], respectively, which are obviously outside the aforesaid 120-day period. Consequently, the 30-day period within which Petitioner may file its judicial claims for refund before this Court should be reckoned from October 28, 2015 and January 28, 2016, respectively. Thus, Petitioner had until November 27, 2015 and February 27, 2016, respectively, to file its appeal before this Court.

For better understanding, the Court recapitulates the aforesaid material dates below:

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67 G.R. No. 192006, November 14, 2018.

68 Docket (CTA Case No. 9208), JSFI, Summary of Admitted Facts, Par. 4, p. 1029; Exhibit "P-60", Pars. 33 to 35, p. 888; Exhibit "45", p. 1800.

69 *Id.*, JSFI, Summary of Admitted Facts, Par. 6, p. 1029; Exhibit "P-60", Pars. 33 to 35, p. 888; Exhibit "46", p. 1801.

CTA Case No.	Date of Filing of Administrative Claim	End of 120 days for the CIR to decide the claim	Date of Receipt of Denial Letter from the CIR	End of 30 days from expiration of the 120 days
9208	June 30, 2015	Oct. 28, 2015	Nov. 5, 2015	Nov. 27, 2015
9274	Sept. 30, 2015	Jan. 28, 2016	March 4, 2016	Feb. 27, 2016

Thus, the instant Petitions for Review filed on November 27, 2015[70] and February 24, 2016[71] for the second and third quarters of 2013, respectively, are well within the period prescribed by law. Such being the case, Petitioner fulfilled both the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered taxpayer.

Petitioner likewise complied with the *third* requisite considering that it is registered with the BIR as VAT taxpayer with Certificate of Registration No. 0CN8RC0000038356 effective October 30, 2001, and with Tax Identification Number (TIN) 214-127-981-000.[72]

Petitioner failed to establish that part of its declared sales/receipts for the subject period of claim qualifies for VAT zero-rating

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

In its Amended Quarterly VAT Returns for the second and third quarters of TY 2013, the total declared sales/receipts was Php2,006,395,837.75, which consisted of zero-rated sales/receipts in the amount of Php1,976,051,152.90, and VATable sales/receipts in the amount of Php30,344,684.85, broken down as follows:[73]

Sales/Receipts	second quarter – TY 2013	third quarter – TY 2013	Total
VATable sales/receipts	Php 22,467,509.43	Php 7,877,175.42	Php 30,344,684.85

[70] *Id.*, pp. 10 to 23.
[71] Docket (CTA Case No. 9274), pp. 10 to 27.
[72] Docket (CTA Case No. 9208), Exhibit "P-4", p. 1671.
[73] *Id.*, Exhibits P-26 and P-28, pp. 1783 and 1785.

Zero-rated sales/receipts	1,235,731,718.83	740,319,434.07	1,976,051,152.90
Total	**Php1,258,199,228.26**	**Php748,196,609.49**	**Php2,006,395,837.75**

Petitioner's witness, Ms. Feliciano, testifies that Petitioner is a Renewable Energy ("RE") Developer of 136 MW Geothermal Resources (Tiwi Geothermal Production Field) and 236 MW Geothermal Resources (Makiling-Banahaw [Mak-Ban] Geothermal Production Field). Thus, its sale of steam generated through renewable geothermal energy should be considered as VAT zero-rated,[74] pursuant to Section 15(g) of RA No. 9513 otherwise known as The Renewable Energy Act of 2008, which pertinently provides as follows:

"CHAPTER VII
GENERAL INCENTIVES

SECTION 15. *Incentives for Renewable Energy Projects and Activities.* – **RE Developers of renewable energy facilities**, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

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

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

[74] *Id.*, Exhibit "P-60", 24 A, p. 882.

> performed by subcontractors and/or contractors." *(Emphases and underscoring supplied)*

Relative thereto, Petitioner cites Section 108(B)(7) of the NIRC of 1997, as amended, which states:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate**:
>
> xxx xxx xxx
>
> (7) **Sale of power or fuel generated through renewable sources of energy such as, but not limited to,** biomass, solar, wind, hydropower, **geothermal,** ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels." *(Emphases supplied)*

It is clear from the foregoing that an RE Developer's[75] sale of power or fuel generated through renewable source such as geothermal energy is subject to zero percent (0%) VAT.

In relation thereto, Part III, Rule 5 of the Implementing Rules and Regulations[76] of RA No. 9513 states the conditions for the availment of incentives and other privileges under the said law. Section 18(A), (B), and (C) thereof reads:

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

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[75] Section 4(pp), RA No. 9513 defines RE Developer as "individual/s or 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 sytstems/facilities".

[76] Department Circular No. DC2009-05-0008 dated May 25, 2009 issued by the Department of Energy (DOE).

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

> *(1)* ***DOE Certificate of Registration*** – **issued to an RE Developer holding a valid RE Service/Operating Contract.**
>
> For existing RE projects, the new RE Service/Operating Contract shall preterminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.
>
> The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.
>
> Any investment added to existing RE projects shall be subject to prior approval by the DOE.
>
> *(2) DOE Certificate of Accreditation* – issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.

B. Registration with the Board of Investments (BOI)

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

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, <u>RE Developers</u> and manufacturers,

> fabricators, and suppliers of locally-produced RE equipment, **shall register with the BOI.**
>
> The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.
>
> C. *Certificate of Endorsement by the DOE*
>
> **<u>RE Developers</u>,** and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis**.
>
> The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; *Provided,* That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR."

The use of the word "shall" in the above-quoted implementing rules and regulation indicates the mandatory submission of the below enumerated documents in order to qualify for VAT zero-rating:

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

In this case, Petitioner was able to present its Certificates of Registration Nos. GSC No. 2013-04-045 and 2013-04-04, both issued by the DOE, certifying that Petitioner is duly registered as an RE Developer of Geothermal Energy Resources located in (1) Makiling-Banahaw, Batangas and Laguna (covered by Geothermal Service Contracts Nos. GSC 2013-04-045); and (2) Tiwi-Albay (covered by Geothermal Service Contracts GSC 2013-04-04), both effective April 25, 2013, respectively.[77]

Petitioner was also able to submit its Certificates of Registration with the BOI bearing Registration Nos. 2014-067 and 2014-066, both dated April 15, 2015, together with its "SPECIFIC TERMS AND CONDITIONS" and "GENERAL TERMS AND CONDITIONS", for its Makiling-Banahaw and Tiwi geothermal production fields.[78] However, the Court notes that both Certificates were only issued on April 15, 2014, which is obviously outside the period of claims (second and third quarters of TY 2013). Thus, no evidence was presented in this case showing that Petitioner was registered with the BOI for the subject period of claims.

The records are likewise bereft of any showing that a Certificate of Endorsement has been issued by the DOE in its favor for the subject period of claims.

Thus, for Petitioner's failure to present all the above-stated documentary evidence, Petitioner's reported zero-rated sales/receipts in the aggregate amount of Php1,976,051,152.90, cannot qualify as VAT zero-rated sales.

With the foregoing disquisitions, it is clear that Petitioner failed to fulfill the *fourth* requisite for the successful prosecution of the instant claims. Thus, the instant *Petitions for Review* must already be denied.

Correspondingly, it is no longer necessary to determine whether Petitioner fulfilled the other remaining requisites to merit favorable consideration for its claims.

It bears stressing that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. **The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit**. Since taxes are the lifeblood of the government, **tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed**.[79]

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77 Docket (CTA Case No. 9208), Exhibits "P-6" and "P-7", pp. 1672 to 1709 and 1710 to 1747, respectively.

78 *Id.*, Exhibits "P-8" to "P-11", pp. 1748 to 1763.

79 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice