REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAIBARARA GEOTHERMAL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1765
(CTA Case Nos. 8699, 8732, 8771 & 8811)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

MAR 14 2019 1:15 p.m.

x- x

DECISION

Fabon-Victorino, J.:

On appeal before the Court *En Banc* are the August 18, 2017 Decision[1] and January 3, 2018 Resolution[2] of the Court in Division in CTA Case Nos. 8699, 8732, 8771 and 8811, which denied petitioner's claim for refund or issuance of tax credit certificate (TCC) of its alleged excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for the four (4) quarters of calendar year (CY) 2011 in the aggregate amount of ₱15,789,213.64.

Petitioner seeks to reverse the adverse Decision and Resolution and prays that an order be issued directing respondent to refund or issue a TCC in the total amount of ₱15,789,213.64 in its favor.

[1] *En Banc* docket, pp. 40-59.
[2] *En Banc* docket, pp. 32-37.

The Facts and the Proceedings

Petitioner Maibarara Geothermal, Inc. is a domestic corporation with business address at 7th Floor, JMT Building, ADB Avenue, Ortigas Center, Pasig City. It is engaged in power generation as indicated in its primary purpose stated in its Articles of Incorporation[3], to wit:

> To explore, extract, exploit, or otherwise obtain from the earth, store, hold, use, treat, reinject, prepare for market, buy, sell, distribute, exchange and transport geothermal steam and brine, and all their products, compounds and derivatives; to convert geothermal energy into electric power and to build, construct, erect, own, equip, install, operate, maintain, sell, lease power generation plants, facilities, machineries, equipment that utilize, geothermal energy; to sell, trade, transmit or distribute any electricity generated by such power plants; to utilize geothermal steam and brine for industrial, agricultural, health, tourism, mineral recovery and processing and other similar direct and indirect uses of geothermal steam and brine.

Petitioner is a registered Renewable Energy (RE) Developer of a 20 MW Maibarara Geothermal Power Generation Project in Batangas and Laguna under Certificate of Registration No. GRESC 2011-01-025 issued by the Department of Energy (DOE) and Certificate of Registration No. 2011-06 issued by the Board of Investments (BOI).[4]

Petitioner is likewise registered with the Bureau of Internal Revenue as a VAT-taxpayer with Taxpayer Identification Number (TIN) 007-843-328-000 as shown in its Certificate of Registration No. OCN3RC0000483772 dated September 8, 2010.[5]

---

[3] Exhibit P-2, Docket (CTA Case No. 8699) -Vol. III, p. 1747.
[4] Exhibits P-3 and P-4, Docket (CTA Case No. 8699) — Vol. III, p. 1786 and p. 1787, respectively.
[5] Exhibit P-7, Docket (CTA Case No. 8699) — Vol. III, p. 1797.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), with the power to grant or deny claims for refund or issuance of tax credit certificate (TCC) as provided by law. He holds office at 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

During the four (4) quarters of CY 2011, petitioner allegedly incurred input taxes from its: (1) domestic purchases of goods other than capital goods; (2) importation of goods other than capital goods; and (3) domestic purchases of services, relative to the development, construction and installation of its power facilities, which were reported in its Quarterly VAT Returns[6] as follows:

Quarterly VAT Return	Purchases	Input Tax	Date Filed
1st Quarter	₱ 84,133,162.16	₱ 10,095,979.46	April 25, 2011
2nd Quarter	26,124,525.32	3,134,942.99	July 25, 2011
3rd Quarter	12,789,102.13	1,534,692.20	October 19, 2011
4th Quarter	8,530,011.32	1,023,598.99	January 20, 2012

The above input taxes were allegedly attributable to its zero-rated sales/receipts which were not utilized in the same quarter they were incurred nor used against its output taxes in the subsequent periods.

Thus, petitioner filed with respondent four (4) separate *Applications for Tax Credit/Refund*[7] of its alleged unutilized input VAT for the 1st, 2nd, 3rd, and 4th quarters of CY 2011 on March 22, 2013, June 24, 2013, September 26, 2013, and December 13, 2013, respectively, in the aggregate amount of ₱15,789,213.64.

Respondent failed to act on the said administrative claims prompting petitioner to seek judicial intervention via four (4) separate Petitions for Review docketed as CTA Case Nos. 8699,[8] 8732,[9] 8771,[10] and 8811[11] on August 16, 2013,

---

[6] Exhibits P-17, P-18, P-19, and P-20, CTA Case No. 8699, docket, vol. III, p. 1846, p. 1849, p. 1853, and p. 1857, respectively.
[7] Exhibits P-9, P-10, P-11, P-12, P-13, P-14, P-15, and P-16, Docket (CTA Case No. 8699) — Vol. III, pp. 1818 to 1823, p. 1824, pp. 1825 to 1830, p. 1831, pp. 1832 to 1837, p. 1838, pp. 1839 to 1844, p. 1845, respectively.
[8] Docket (CTA Case No. 8699) — Vol. I, p. 14.
[9] Docket (CTA Case No. 8732), p. 17.
[10] Docket (CTA Case No. 8771), p. 7.
[11] Docket (CTA Case No. 8811), p. 1.

November 15, 2013, February 21, 2014, and April 30, 2014, respectively.

In his Answers[12] filed for CTA Case Nos. 8699, 8732, 8771, and 8811, respondent basically argued that in an action for refund/tax credit, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to the refund sought.

At the instance of petitioner, the four (4) cases were consolidated per Resolutions dated April 8, 2014,[13] April 14, 2014[14] and July 11, 2014[15].

During the trial, only petitioner presented evidence. Respondent, despite the opportunity granted, failed to present any.

On August 17, 2017, the Court in Division rendered the assailed Decision denying petitioner's consolidated Petitions for Review, for lack of merit. The Court in Division ruled that petitioner's administrative claims for refund of its input VAT from the 1st to 4th quarters of TY 2011 were prematurely filed since there was yet no zero-rated or effectively zero-rated sales during the subject periods. Citing the case of *Luzon Hydro Corporation v. Commissioner of Internal Revenue*[16], the Court in Division explained that it is essential for petitioner to show that zero-rated or effectively zero-rated sales exist, upon which the input VAT, which is sought to be refunded, must be attributable. When there is no zero-rated or effectively zero-rated sale on the part of the taxpayer-claimant, the input VAT is not refundable, or at the very least, is not yet refundable, says the Court in Division.

Aggrieved, petitioner moved for reconsideration but the same was denied in the equally assailed Resolution of January 3, 2018.

---

[12] Docket (CTA Case No. 8699) — Vol. I, pp. 78 to 81; Docket (CTA Case No. 8732), pp. 93 to 97; Docket (CTA Case No. 8771), pp. 99 to 103 [Docket (CTA Case No. 8699) — Vol. I, pp. 608 to 612]; and Docket (CTA Case No. 8811), pp. 81 to 85.
[13] Docket (CTA Case No. 8699) — Vol. I, p. 593, and Docket (CTA Case No. 8771), p. 95, respectively.
[14] Docket (CTA Case No. 8699) — Vol. I, pp. 595 to 596.
[15] Docket (CTA Case No. 8699) — Vol. I, p. 670.
[16] G.R. No. 188260, November 13, 2013.

Hence, the instant Petition for Review[17] filed on February 5, 2018, anchored on the following error allegedly committed by the Court in Division, *viz.*:

> THE HONORABLE FIRST DIVISION ERRED IN RULING THAT PETITIONER'S ADMINISTRATIVE CLAIMS FOR THE REFUND OF ITS INPUT VAT FROM THE 1ST TO 4TH QUARTERS OF TAXABLE YEAR 2011 IN THE AGGREGATE AMOUNT OF FIFTEEN MILLION SEVEN HUNDRRED EIGHTY-NINE THOUSAND TWO HUNDRED THIRTEEN PESOS AND 64/100 (P15,789,213.64) AS WELL AS THE RESPECTIVE JUDICIAL CLAIMS WERE PREMATURELY FILED SINCE THERE WAS NO ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES DURING THE SUBJECT PERIODS.

Petitioner, citing the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, states that no less than the Supreme Court ruled that the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, must commence from the close of the taxable quarter when the **relevant sales were made <u>pertaining to the input VAT</u>** regardless of whether the tax was paid or not. Petitioner believes that the phrase "relevant sales" pertain to the taxpayer-claimant's purchases of goods and services from which it incurred input VAT, and not from the time of taxpayer-claimant's zero-rated or effectively zero-rated sales. Thus, the two-year prescriptive period must be reckoned from the time the goods or services were purchased from which the input VAT were incurred and not from the time the zero-rated or effectively zero-rated sales were made.

Petitioner also contends that Section 112(A) of the NIRC of 1997, as amended, does not require that the zero-rated or effectively zero-rated sales must be made during the same period when the input taxes sought to be refunded were incurred or paid. According to petitioner, the taxpayer-claimant needs only to establish the existence or presence of

[17] *En Banc* docket, pp. 7-25.

zero-rated or effectively zero-rated sales and attribute the input taxes subject of the claim to said sales. Moreover, it is not necessary that the zero-rated or effectively zero-rated sales and the input taxes subject of the refund fall during the same periods.

Admittedly, it had no zero-rated or effectively zero-rated sales during the 1st to 4th quarters of TY 2011 unto which the input taxes can be attributed to, petitioner however asserts that it is entitled to a refund of unutilized input taxes incurred during the 1st to 4th quarters of TY 2011 as the said input taxes can be solely attributed to its first zero-rated sale of electricity generated from geothermal energy during the 1st quarter of TY 2014.

Respondent, on the other hand counters that to be entitled to the refund of the input VAT it incurred, petitioner should have already sold electricity from renewable sources of energy. In the case at bar, there were yet no sales made by petitioner within the period of its claim for it to be entitled to the refund of its input tax pursuant to Section 112(A) of the NIRC of 1997, as amended.

On March 23, 2018, the Court *En Banc* gave due course to the instant Petition for Review and submitted the same for decision.[18]

The Court *En Banc's* Ruling

After a careful review of petitioner's arguments and the record of the case, the Court *En Banc* finds no reason to reverse or even modify the assailed Decision and Resolution of the Court in Division. All the arguments presented by petitioner are a replica of its arguments in its Motion for Reconsideration dated September 6, 2017, which the Court in Division already considered and passed upon in the assailed Resolution of January 3, 2018. In any event, petitioner's arguments shall be discussed briefly to emphasize the ruling of the Court in Division.

---

[18] Resolution, *En Banc* docket, pp. 68-69.

The two-year prescriptive period provided under Section 112(A) should be reckoned from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made:

Contrary to petitioner's assertion, the two-year prescriptive period under Section 112(A) of the NIRC of 1997, as amended, should be reckoned from the close of the taxable quarter when the **relevant <u>zero-rated or effectively zero-rated</u> sales were made** and **NOT** from the purchases of goods and services were made from which the input VAT was incurred. This is plain in Section 112(A), which reads as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — **Any VAT-registered person, <u>whose sales are zero-rated or effectively zero-rated may</u>, within two (2) years after the close of the taxable quarter <u>when the sales were made</u>, 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: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales. (*Boldfacing and underscoring supplied*)

To follow petitioner's assertion that the word "sales" in the phrase "*when the sales were made*" pertains to the taxpayer-claimant's purchases of goods and services from which it incurred input VAT and not the taxpayer-claimant's zero-rated or effectively zero-rated sales, is not only erroneous but also perplexing. Thus, the Court in Division explained the matter in the following fashion:

> In the first sentence of Section 112 (A) of the NIRC of 1997, as amended, the word "sales" was mentioned three (3) times, and **these all refer to zero-rated sales or effectively zero-rated sales**.
>
> xxx xxx xxx
>
> Apparently, the first time the word "*sales*" was used in the said provision is when it qualifies that the concerned VAT-registered person must be engaged in "*zero-rated or effectively zero-rated*" sales. The second instance is when it is used to describe the reckoning of the two-year period, *i.e.*, after the close of the quarter "*when the sales were made*." And the last and third occasion is when the same provision qualifies that the input tax to be refunded must be "*attributable to such sales*."
>
> A more careful and cursory reading of the foregoing provision would reveal that the phrase "*when the sales were made*" would necessarily refer to the word "*sales*" found in the earlier phrase "*whose sales are zero-rated or effectively zero-rated*."
>
> xxx xxx xxx

> For another, and more significantly, the succeeding words in Section 112(A) would be referring to the "*input tax due or paid attributable to such sales*." In other words, the input tax due or paid which may be refunded by the taxpayer-claimant under Section 112(A) must be attributable to "*such sales*," or to the "*sales*" previously referred to (by the use of the word "*such*" prior to the word "*sales*"). Obviously, the "*sales*" previously referred to is in the phrase "*when the sales were made*." **Thus, to say that latter phrase actually refers to "*when the purchases were made*," the subject law becomes <u>incomprehensible</u>, since the input tax due or paid must already be "*attributable to such purchases*."** Thus, such could not be the case. (*Emphases supplied*)

Elementary is the rule that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says.[19]

The taxpayer-claimant must show the existence or presence of zero-rated or effectively zero-rated sales during the subject period to which the input VAT sought to be refunded are attributable:

Petitioner opines that it is not necessary that the zero-rated or effectively zero-rated sales and input taxes subject of the refund fall during the same period.

We are not persuaded.

---

[19] *Baranda, et al. vs. Gustilo, et al.*, G.R. No. 81163, September 26, 1988.

In the case of *San Roque Power Corporation v. Commissioner of Internal Revenue,*[20] the Supreme Court enumerated the requisites that must be satisfied to be entitled to a refund or tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales under Section 112(A) of the NIRC of 1997, as amended, to wit:

> a) the taxpayer is VAT-registered;
> b) the taxpayer is engaged in zero-rated or effectively zero-rated sales;
> c) the input taxes are due or paid;
> d) the input taxes are not transitional input taxes;
> e) the input taxes have not been applied against output taxes during and in the succeeding quarters;
> f) **the input taxes claimed are attributable to zero-rated or effectively zero-rated sales**;
> g) for zero-rated sales under Sections 106 (A) (2) (1) and (2); 106 (B); and 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;
> h) 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; and
> i) **the claim is filed within two years after the close of the taxable quarter <u>when such sales were made</u>**. (*Emphases supplied*)

It is clear from the foregoing requisites that it is essential for the taxpayer-claimant to prove that it had zero-rated or effectively zero-rated sales during the pertinent taxable quarter unto which the input VAT, which is sought to be refunded, can be attributed to. Thus, petitioner must first establish that zero-rated or effectively zero-rated sales unto which the input VAT can be attributed to exist. It cannot be the other way around lest it is going to be putting the cart before the horse.

---

[20] G.R. No. 180345, November 25, 2009.

In *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*,[21] the Supreme Court aptly elucidated as follows:

> **The petitioner did not competently establish its claim for refund or tax credit. We agree with the CTA *En Banc* that the petitioner did not produce evidence showing that it had zero-rated sales for the four quarters of taxable year 2001. As the CTA *En Banc* precisely found, the petitioner did not reflect any zero-rated sales from its power generation in its four quarterly VAT returns, which indicated that it had not made any sale of electricity**. Had there been zero-rated sales, it would have reported them in the returns. Indeed, it carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned, or in the *de novo* litigation before the CTA in Division. (*Boldfacing supplied*)

Significantly, petitioner admitted the fact that it had no zero-rated or effectively zero-rated sale during the 1st to the 4th quarters of CY 2011 unto which the input taxes could be attributed to. Thus, the Court *En Banc* is one with the Court in Division in holding that:

> *xxx* without any zero-rated or effectively zero-rated sales being shown by petitioner, the attribution requirement or that the input tax due or paid must be attributable "to such sales" cannot be fulfilled or complied with. To be clear, what is refundable under Section 112(A) is the

[21] G.R. No. 188260, November 13, 2013.

> input VAT attributable to the taxpayer-claimant's zero-rated or effectively zero-rated sales. **Thus, petitioner's contention that the existence of zero-rated or effectively zero-rated sales during the subject period is immaterial, has no basis in law.** (*Boldfacing supplied*)

As a certified Renewable Energy Developer, petitioner is entitled to zero-rated VAT on its local purchases of goods, properties and services necessary for the development, construction and installation of its plant facilities. As such, it was erroneous for petitioner's local supplier of goods, properties and services to subject their sales to petitioner to 12% VAT. In the same vein, it is not correct for petitioner to recognize the said passed-on VAT as input taxes.

Consequently, when petitioner paid input VAT on its local purchases of goods, properties and services, despite the clear provision of the law that it is subject to VAT at zero percent rate, petitioner's recourse is not against the government or the taxing authority, but against the local supplier of goods, properties and services who shifted the output VAT.[22]

While the VAT zero-rating incentive does not extend to petitioner's importation of goods (other than capital goods), the input taxes incurred from such importation can still not be refunded for the same reason as discussed earlier.

Settled is the rule that a claim for tax refund is in the nature of tax exemption. Laws granting exemption from tax are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who thus seeks to be privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[23]

---

[22] *Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue*, G.R. No. 190506, June 13, 2016.
[23] *Sea-Land Services, Inc. vs. Court of Appeals*, G.R. No. 122605, April 30, 2001.

WHEREFORE, the *Petition for Review* filed by petitioner Maibarara Geothermal, Inc. on February 5, 2018 is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision and Resolution dated August 18, 2017 and January 3, 2018, respectively, are **AFFIRMED.**

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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