Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1863** (CTA Case Nos. 8871, 8937, 8999 and 9042)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
MAIBARARA GEOTHERMAL, INC., Respondent.	Promulgated: OCT 04 2019 3:30 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on February 7, 2019 is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review

amended, of the Amended Decision[2] dated December 27, 2017, rendered by the Third Division of this Court in CTA Case Nos. 8871, 8937, 8999, and 9042, and its Resolution[3] dated May 3, 2018. The Third Division of this Court partially granted the petition filed by respondent Maibarara Geothermal, Inc. (MGI) and ordered the refund of its unutilized input VAT on importation of goods and local purchases for calendar year 2012 in the amount of ₱7,286,210.93.

Petitioner Commissioner of Internal Revenue (CIR) assails both the aforesaid Amended Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Amended Decision dated December 27, 2017:

> *"**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the Decision of this Court dated August 2, 2017, is amended to read as follows:*
>
> > *'**WHEREFORE**, premises considered, the Petitions for Review filed on August 18, 2014, on November 26, 2014, on February 25, 2015, and on May 13, 2015 are **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱7,286,210.93**, representing its unutilized input VAT on importation of goods (other than capital goods) and local purchases not directly related to RE development and conversion incurred in the four quarters of CY 2012, and attributable to its zero-rated sales for the first quarter of CY 2012.*
> >
> > ***SO ORDERED.'***
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> ***SO ORDERED."***

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as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En Banc Docket, pp. 50-61.
[3] En Banc Docket, pp. 66-71.

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Resolution dated May 3, 2018:

> "***WHEREFORE***, *finding no cogent reason to reverse the ruling in the assailed Amended Decision, respondent's* ***Motion for Reconsideration (Amended Decision of 27 December 2017)*** *is* ***DENIED*** *for lack of merit.*
>
> ***SO ORDERED.***"

The pertinent facts as narrated by this Court in Division in its Decision dated August 2, 2017, read as follows:

> *"Petitioner [4] Maibarara Geothermal, Inc. is a corporation duly registered under the laws of the Philippines, with address at 7th Floor, JMT Building, ADB Avenue, Ortigas Center, Pasig City.*
>
> *Petitioner is duly registered with the Securities and Exchange Commission (SEC) with Company Registration No. CS201012659. Its primary purpose is 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."*
>
> *On the other hand, respondent[5] is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who is vested by law with power to decide, approve, and grant a refund of internal revenue taxes or issue a tax credit certificate. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.*

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[4] Maibarara Geothermal, Inc. (MGI) was the petitioner before the Court in Division and thereafter the respondent before this Court *En Banc*.
[5] Commissioner of Internal Revenue (CIR) was a respondent before the Court in Division and thereafter the petitioner before this Court *En Banc*.

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On March 31, 2014 , June 30, 2014 , September 29, 2014, and December 19, 2014 , petitioner filed with the BIR Revenue District Office (RDO) No. 43A in Pasig City its administrative claims for refund involving its alleged unutilized input VAT for the 1st, 2nd, 3rd, and 4th quarters of 2012, attributable to zero-rated sales, in the following amounts:

TAXABLE PERIOD (2012)	***DATE OF FILING THE ADMINISTRATIVE CLAIM FOR REFUND***	***AMOUNT CLAIMED FOR REFUND***
1st Quarter	*March 31, 2014*	*₱1,165,619.50*
2nd Quarter	*June 30, 2014*	*699,508.85*
3rd Quarter	*September 29, 2014*	*3,526,851.38*
4th Quarter	*December 19, 2014*	*3,773,933.01*
TOTAL		***₱9,165,912.74***

Alleging that respondent failed to act on the foregoing applications for refund within the 120-day period provided by law, petitioner filed four (4) separate Petitions for Review on August 18, 2014, on November 26, 2014, on February 25, 2015, and on May 13, 2015, seeking the refund of its alleged unutilized input VAT as per its Quarterly VAT Returns for the 1st, 2nd, 3rd, and 4th quarters of taxable year 2012, respectively.

Respondent filed the respective Answers to the Petitions for Review on October 20, 2014, on January 21, 2015, on March 20, 2015, and on June 17, 2015, interposing the following special and affirmative defenses:

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Both petitioner and respondent filed their respective Pre-Trial Briefs for CTA Case No. 8871 on November 21, 2014.

On November 27, 2014, the pre-trial conference was held for CTA Case No. 8871 and the parties subsequently filed their Joint Stipulations of Facts and Issues on December 4, 2014. The Court later issued the Pre-Trial Order on January 12, 2015.

As for CTA Case No. 8937, respondent's Pre-Trial Brief and petitioner's Pre-Trial Brief were filed on February 18, 2015 and on February 26, 2015, respectively, and a pre-trial conference was held on March 3, 2015.

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On March 12, 2015, petitioner filed for CTA Case No. 8871 a Motion to Consolidate CTA Case Nos. 8871, 8937, and 8999; which was later granted in a Resolution dated March 20, 2015.

On May 29, 2015, petitioner filed for CTA Case Nos. 8871, 8937, and 8999 a Motion to Consolidate CTA Case Nos. 8871, 8937, 8999, and 9042 with Motion to Defer Pre-Trial Conference set on June 9, 2015.

On June 5, 2015, respondent's Pre-Trial Brief was filed for CTA Case Nos. 8871, 8937, and 8999.

The Court later issued a Resolution on June 18, 2015, granting petitioner's Motion to Defer the Pre-Trial Conference and resetting the same to August 11, 2015. The Court also noted that respondent agreed to the consolidation of CTA Case No. 9042 with CTA Case Nos. 8871, 8937, and 8999.

On July 2, 2015, the Court granted the consolidation of CTA Case Nos. 9042, 8999, and 8937 with CTA Case No. 8871, the case bearing the lowest docket number.

Petitioner filed the Consolidated Pre-Trial Brief for CTA Case Nos. 8871, 8937, 8999, and 9042 on August 5, 2015. Meanwhile, respondent's Pre-Trial Brief was filed on August 6, 2015.

The pre-trial conference was held for CTA Case Nos. 8871, 8937, 8999, and 9042 on August 11, 2015. Subsequently, the parties filed their Consolidated Joint Stipulation of Facts and Issues on August 24, 2015.

The Court later issued the Pre-Trial Order for CTA Case Nos. 8871, 8937, 8999, and 9042 on September 21, 2015.

During trial, petitioner presented the following witnesses: Mr. Helenio B. Seraspi, Accounting Manager; Atty. Clifford Chua, Court-commissioned Independent Certified Public Accountant (CPA); Atty. Dan Dyonne Eminiano Gonzales, Legal Officer; and Maria Victoria M. Olivar, Geosciences Manager.

Petitioner then filed its Formal Offer of Evidence on May 4, 2016.

In the Resolution dated May 30, 2016, the Court admitted petitioner's Exhibits "P-1" to "P-334" except exhibits "P-79", "P-80", "P-81" "P-83" to "P-90", "P-136", "P-138", "P-144", "P-146", "P-148", "P-162", "P-192", "P-

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> *193", "P-213", "P-230", "P-272", "P-275", "P-279", "P-281" to "P-283", "P-285", "P-286", "P-289", "P-290", "P-292", "P-293", "P-294", and "P-295"; which were denied admission for failure to submit the same to the Court.*
>
> *On the other hand, respondent presented Revenue Officer Madonna D. Bognot as its lone witness during the hearing held on June 21, 2016. On the same hearing, respondent made an oral offer in open court of his documentary evidence; which were admitted by the Court.*
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> *The consolidated cases were declared submitted for decision on August 31, 2016, after both petitioner and respondent flied their respective Memorandum on August 22, 2016."*

On August 2, 2017, the Court in Division denied the claim for refund. Citing the case of Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue[6] decided by the Court En banc, the Court in Division ruled that said case is similar to the case at hand where the purchases pertaining to the input taxes claimed are also subject to zero (0%) percent VAT rate; thus, no output VAT shall be shifted to the taxpayer. The Court in Division concluded that respondent MGI is not entitled to refund or issuance of tax credit certificate from its purchases of goods and services.

Respondent MGI filed a motion for reconsideration and argued that only local purchases of goods, services and properties related to renewable energy are subject to zero percent VAT under Republic Act (RA) No. 9531 or the Renewable Energy Act of 2008 (RE Law). According to respondent MGI, Section 15 of the RE Law expressly subjects only local purchases of goods, services and properties related to RE to zero percent VAT. There is even no mention of importations.

In the Amended Decision dated December 27, 2017, the Court in Division granted the motion for reconsideration filed by respondent MGI.

Petitioner CIR filed a motion for reconsideration of the Amended Decision. However, in the Resolution dated May 3, 2018, petitioner CIR's motion for reconsideration was denied.

[6] CTA EB No. 403 (CTA Case No. 7022), May 29, 2009.

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Hence, the present petition was filed.

On September 10, 2018, respondent MGI filed a "Comment/Opposition (To Petitioner's Petition for Review dated June 8, 2018). In its comment, respondent MGI asserts the following:

1. The Petition for Review is just a reiteration of the allegations, which the Court had already ruled upon in its Decision, and Resolution dated December 27, 2017 and May 3, 2018, respectively;

2. Respondent is entitled to the Honorable Court's grant of ₱7,286,210.93 as refund for its unutilized input VAT on importation of goods, local purchases not directly related to RE development and conversion incurred in the four quarters of the taxable year 2012;

3. The factual circumstances of Maibarara Geothermal, Inc. vs. Commissioner of Internal Revenue (CTA case Nos. 8699, 8732, 8771, & 8881) which was decided by the Honorable Court's First Division and the instant case are not the same;

4. Respondent timely filed its administrative and judicial claims.

In a Resolution dated October 3, 2018, the petition was given due course and the parties were directed to submit their respective memoranda within thirty (30) days from receipt thereof.

With the filing of respondent MGI's Memorandum on December 20, 2018 and the Records Verification Report dated January 11, 2019, stating that petitioner CIR failed to file a Memorandum, the petition was submitted for decision on February 7, 2019.

The sole issue raised by petitioner CIR in the petition is:

> "The Honorable Court erred in partially granting the Petition for Review and ordering the refund of Seven Million Two Hundred Eighty-Six Thousand Two Hundred Ten and 93/100 Pesos (Php

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7,286,210.93) representing petitioner's unutilized input VAT on importation of goods (other than capital goods) and local purchases not directly related to RE development and conversion incurred in the four quarters of CY 2012 because these unutilized input taxes are not attributable to Petitioner's zero-rated sales/receipts for the 1st, 2nd, 3rd, and 4th quarters of 2012."

Petitioner CIR argued that respondent MGI is not entitled to the refund of its input VAT on importation from taxable year 2012 since respondent MGI had no zero-rated sales in 2012 to which input VAT can be attributed:

Petitioner CIR asserts that respondent MGI failed to prove any zero-rated sales in 2012 since respondent admitted that its operation only started on the 1st quarter of 2014.

We resolve.

The relevant provisions of law pertaining to the issues raised by petitioner are Section 110(B) and Section 112 (A) and (C) of the National Internal Revenue Code (NIRC) of 1997. They provide for the treatment of excess output tax or input tax and the requirements for the issuance of a tax credit certificate or refund of input tax due or paid attributable to the taxpayer's zero-rated sales or effectively zero-rated sales, to wit:

Section 110 (B) of the NIRC of 1997, as amended, provides:

> *"SEC. 110. Tax Credits.-*
>
> *(A) Creditable Input Tax.- xxx xxx xxx.*
>
> *(B) Excess Output or Input Tax. — if at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.*

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Section 112 (A) and (C) of the NIRC of 1997, as amended, provides:

"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 or 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.

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(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 the 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."

It is clear from the foregoing provisions, that if output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. However, if the input tax exceeds the

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output tax, the excess shall be carried over to the succeeding quarter or quarters, provided that any input tax attributable to zero-rated sales may at its option be refunded or credited against other internal revenue taxes within two (2) years after the close of the taxable quarter when the sales were made to the extent that such input tax has not been applied against output tax.

Otherwise stated, under Section 110 (B) and Section 112 (A) and (C) of the NIRC, the remedies available to the taxpayer in case of unutilized input VAT credits are: 1) the carrying over of the excess input tax into the succeeding quarter or quarters; 2) the claim for refund or issuance of tax credit certificate within two (2) years after the close of the taxable quarter when the sales were made.

In relation thereto, Sections 18 and 19 of Revenue Regulations No. 4-2007: Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005, provide as follows:

> ***"Section 18. Determination of the Output Tax and VAT Payable and Computation of VAT Payable or Excess Tax Credits.*** *- Sec. 4.110-6 of RR No. 16-2005 is hereby amended to read as follows:*
>
> > ***'SEC. 4.110-6. Determination of the Output Tax and VAT Payable and Computation of VAT Payable or Excess Tax Credits.*** *xxx xxx xxx.*
> >
> > *There shall be allowed as a deduction from the output tax the amount of input tax deductible as determined under Sec.4.110-1 to 4.110-5 of these Regulations to arrive at VAT payable on the monthly declaration and the quarterly VAT returns."*
>
> ***Section 19. VAT Payable (Excess Output) or Excess Input Tax.-*** *Sec. 4.110-7 of RR No. 16-2005, as last amended by RR No. 2-2007, is hereby further amended to read as follows:*
>
> > ***"SEC.4.110-7. VAT Payable (Excess Output) or Excess Input Tax .***
> >
> > *xxx xxx xxx.*
> >
> > *(b.) If the input tax inclusive of input tax carried over from the previous quarter exceeds the output*

tax, the excess input tax shall be carried over to the succeeding quarter or quarters; Provided, however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or applied for a tax credit certificate which may be used in the payment of internal revenue taxes, subject to the limitations as may be provided for by law, as well as, other implementing rules.

Illustration:

For a given taxable quarter, XYZ Corporation has output VAT of 100 and input VAT of 110. Since input tax exceeds the output tax for such taxable quarter, there is an excess input tax at the end of the quarter of 10 which may be carried over to the next quarter or quarters."

Likewise, in Sections 4.110-1, 4.110-8 and 4.112-1 of Revenue Regulations No. 16-2005, as amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005, provides as follows:

***"SEC. 4.110-1. Credits For Input Tax.-- "Input Tax"** means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. xxx.*

xxx xxx xxx.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT registered person in accordance with Secs. 113 and 237 of the Code shall be creditable against the output tax:

xxx xxx xxx.

SEC. 4.110-8. Substantiation of Input Tax Credits. –

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

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(1) For the importation of goods- import entry or other equivalent document showing actual payment of VAT on the imported goods.

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Sec. 4.112-1. <u>Claims for Refund/ Tax Credit Certificate of Input Tax.-</u>

(a) Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services.

A VAT-registered person whose sales of goods, properties, or services are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate/refund of input tax attributable to such sales. The input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax. The application should be filed within two (2) years after the close of the taxable quarter when such sales were made.

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Where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable (including sales subject to final withholding VAT) or exempt sales of goods, 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, only the proportionate share of input taxes allocated to zero-rated or effectively zero-rated sales can be claimed for refund or issuance of a tax credit certificate.

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An examination of the abovementioned provisions of the NIRC and the implementing rules and regulations on VAT or the Consolidated Value-Added Tax Regulations of 2005, as amended, will clearly show that petitioner's arguments have no legal basis.

Neither the law nor the implementing regulations provide that in a claim for refund of input VAT that there be zero-rated or effectively zero-rated transactions at the time the claimed input VAT was incurred or paid.

What the law and the implementing regulations provide is that a taxpayer who has zero-rated or effectively zero-rated transactions is allowed to apply for the issuance of a tax credit certificate or a tax refund for input taxes paid, in

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addition to the option to carry forward the input taxes against future output tax liabilities.

To be entitled to the issuance of a tax credit certificate or tax refund, the input taxes should not have been applied against output taxes. The input tax is attributable to zero-rated or effectively zero-rated sales and the claim should be made within 2 years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. Whether there is no reported zero-rated sale for taxable year 2012 is immaterial as long as the input taxes should not have been applied against output taxes.

In the case at bar, the findings of the Court in Division on the timely filing of administrative and judicial claims are undisputed, to wit:

> *"The present claims cover input taxes incurred in the 1st, 2nd, 3rd, and 4th quarters of 2012, while the alleged relevant zero-rated sale was made on March 25, 2014 covered by the 1st taxable quarter of 2014 that closed on March 31, 2014. Counting two years from the said date, petitioner had until March 31, 2016 within which to file its administrative claim for tax credit/ refund. Clearly, petitioner's administrative claims for refund were seasonably filed within the two-year prescriptive period, xxx:*
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> *xxx xxx xxx.*
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> *As to the timeliness of the judicial claims, it is necessary to quote the provision under Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, which provides the period of limitation within which to appeal before this Court, in relation to Section 112(C) of the NIRC of 1997, as amended, to wit:*
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>> *"SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7 (a) (2) herein.*

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Appeal should be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA ***within thirty (30) days*** *from the receipt of the decision or ruling or in the case of inaction as herein provided,* ***from the expiration of the period fixed by law to act thereon****. xxx" (Emphasis supplied)*

xxx xxx xxx.

xxx, [I]n the case of Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, the Supreme Court, in applying the ruling in the San Roque case, provided a Summary of Rules on Prescriptive Periods Involving VAT as a guide on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the NIRC of 1997, to wit:

'(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.'

A taxpayer-claimant only has a period of thirty (30) days from the expiration of the 120-day period of inaction of the BIR Commissioner to file its judicial claim with this Court, with the exception of claims made during the

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effectivity of BIR Ruling No. DA-489-03 (from December 10, 2003 to October 5, 2010). Failure to do so, the judicial claim shall prescribe.

Applying the foregoing, the Court finds that petitioner's judicial claims for the 1^{st}, 2nd, 3rd, and 4th quarters of 2012 were timely filed within the "120+30" day period, xxx.

xxx xxx xxx.

As to the first requisite that the taxpayer must be a VAT-registered entity, petitioner submitted its BIR Certificate of Registration No. OCN3RC0000483772 with Taxpayer's Identification Number (TIN) 007-843-328-000. Accordingly, the Court finds that the first requisite was satisfied by petitioner.

With regard to the requisite that the taxpayer should be engaged in zero-rated or effectively zero-rated sales, petitioner claims that the sale of fuel from renewable energy sources or power generated from renewable energy, such as geothermal energy, is a transaction or activity subject to zero percent (0%) value-added tax, pursuant to the NIRC of 1997, as amended, and Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008.

The Court agrees with petitioner.

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Based on its Articles of Incorporation, petitioner's primary purpose is 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 derivaties; ***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.*

Records further show that petitioner owns and operates Geothermal Power Plant in Sitio Capoz, Brgy. San Rafael, Sto. Tomas, Batangas as indicated in its Certificate of Compliance issued by the Energy Regulatory Commission on October 13, 2007. It is also registered

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with the Department of Energy (DOE) as "an RE Developer of Geothermal Energy Resources" and with the Board of Investment (BOI) as a "New Renewable Energy Developer of a 20 MW Maibarara Geothermal Power Generation Project". Likewise, its BIR Certificate of Registration indicates that petitioner is engaged in generation, collection, and distribution of electricity.

Furthermore, in its Amended Quarterly VAT Return for the first quarter of 2014, petitioner reflected zero-rated sales/receipts in the amount of ₱39,032,500.00, pertaining to its gross receipts from sale of electricity to Trans-Asia Oil and Energy Development Corporation (Trans-Asia) as evidenced by the Billing Statement, official receipt (OR) issued by petitioner to Trans-Asia for the period of February 8-25, 2014 and their Energy Supply Agreement.

Such sale of electricity generated through a renewable source of energy, particularly, geothermal, qualifies for VAT zero-rating under Section 108 (B) (7) of the NIRC of 1997, as amended.[7]

Furthermore, We find that the Court in Division did not err when it ruled that RE Law does not provide for the zero-rating of an RE Developer's importation, to wit:

"xxx, [T]he RE Law does not provide for the zero-rating of an RE Developers' importation. In fact , the same law provides for the incentives pertaining to RE Developers' imporatations, which is limited to an exemption from payment of tariff duties. Specifically, Section 15 (b) of the RE Law reads:

'SEC. 15. Incentive 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.

(b) ***Duty-free Importation of RE Machinery, Equipment and Materials*** *-Within the first ten (10) years upon the issuance of a certification of an RE developer, the importation of machinery and equipment, and materials and parts*

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[7] Decision dated August 2, 2017, CTA Case Nos. 8871, 8937, 8999 and 9042, Division Docket, Vol. 6, pp. 2705 -2729.

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> *thereof, including control and communication equipment, **shall not be subject to tariff duties**: Provided, however, That the said machinery, equipment, materials and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: Provided, further, That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials and parts are made. (Emphasis supplied)*

It is clear from the above provision that petitioner's importation as an RE Developer is only exempt from tariff duties, provided certain conditions are met, and does not include the zero-rating of or exemption from VAT. As significantly discussed by petitioner, if the law truly intends to exempt or zero rate the importation of an RE Developer, the law could have similarly worded the incentives given to an RE Developer and an RE Commercialization, the latter of which is exempt from both tariff duties and VAT on its importation as follows:

> *SEC. 21. Incentives for RE Commercialization. - All manufacturers, fabricators and suppliers of locally-produced RE equipment and components duly recognized and accredited by the DOE, in consultation with DOST, DOF and DTI, shall, upon registration with the BOI, be entitled to the privileges set forth under this section.*
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> *xxx xxx xxx.*
>
> *(a) Tax and Duty-free Importation of Components, Parts and Materials. - All shipments necessary for the manufacture and/ or fabrication of RE equipment and components **shall be exempted from importation tariff and duties and value added tax**: Provided, however, That the said components, parts and materials are: (i) not manufactured domestically in reasonable quantity and quality at competitive prices; (ii) directly and actually needed and shall be used exclusively in the manufacture/ fabrication of RE equipment; and (iii) covered by shipping documents in the name of the duly registered manufacturer/ fabricator to whom the shipment will be directly delivered by customs authorities: Provided, further, That prior approval of the DOE was obtained before the importation of such*

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components, parts and materials; (Emphasis supplied)

It can be deduced from the foregoing that the law does not intend to exempt an RE Developer, such as petitioner in this case, from payment of VAT on importation. There is likewise nothing in the law which shows that an RE Developer's importation is zero-rated. Thus, the input VAT on importation, which clearly does not pertain to purchase of local supply of goods or properties, is not zero-rated and may therefore be refunded.

xxx xxx xxx.

Considering the foregoing, what is left to be determined at this point is whether petitioner sufficiently substantiated its allegation that the claimed input VAT indeed pertains to importations and to purchases of local supply of goods, properties and services not needed for the development, construction and installation of plant facilities or to the whole process of exploring and developing renewable energy sources up to its conversion into power, which are not zero-rated, but rather subject to regular VAT rate; and thus can be refunded.

Petitioner's quarterly VAT returns for the four quarters of CY 2012 reflected input VAT on importation of goods other than capital goods in the aggregate amount of ₱7,053,203.65, xxx:

xxx.

Out of the declared amount of P7,053,203.65, petitioner was able to substantiate only the amount of P6,959,106.62 with Bureau of Customs (BOC) Import Entry & Internal Revenue Declarations (IEIRDs) and Statements of Settlement of Duties and Taxes, xxx:

xxx.

As to the alleged local purchases not directly related to RE development and conversion in the amount of ₱1,034,058.09, petitioner submitted official receipts (ORs) in support thereof. Upon scrutiny of the ORs presented, only the amount of ₱327,104.31, out of the claimed amount of ₱1,034,058.09, was properly substantiated with ORs and was found to be unrelated to its RE development and conversion. Furthermore, the Court noted exceptions amounting to ₱706,953.78. While a perusal of the ORs relating to these exceptions shows that the same pertains to management fees, there is nothing in the records which would help the Court to determine if they are directly

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> *related or unrelated to petitioner's RE development and conversion activities, thus, should not be refunded. xxx:*
>
> *Since petitioner had no other types of sales, except zero-rated sales, for the first quarter of CY 2014, the valid input VAT of ₱7,286,210.93 is entirely attributable to the valid zero-rated receipts for the same quarter in the amount of ₱39,032,500.00 arising from the sale of electricity to Trans-Asia Oil and Energy Development Corporation.*
>
> *Furthermore, although petitioner carried over the claimed input VAT of ₱9,165,912.74, which includes the refundable amount of ₱7,286,210.93, to the succeeding quarters, the same was not applied against any output VAT in the said quarters and remained unutilized until it was deducted as "VAT Refund/TCC claimed" in its Amended Third Quarterly VAT Return for CY 2014 and First Quarterly VAT Return for CY 2015, in the respective amounts of ₱1,865,128.35 and ₱7,300,784.39 .*
>
> *In view thereof, the Court finds that petitioner is entitled to the refund of the amount of **₱7,286,210.93**, representing its unutilized input VAT on importation of goods (other than capital goods) and local purchases not needed for RE development and conversion which petitioner incurred in the four quarters of CY 2012, and attributable to its zero-rated sales for the first quarter of CY 2014."*[8]

To reiterate, neither the law nor the implementing regulations provide that in claims for refund of input VAT that there be zero-rated or effectively zero-rated transactions at the time the claimed input VAT was incurred or paid. In sum, the arguments raised to support the petition were bereft of legal basis. Hence, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by the evidence on record and it is consistent with prevailing law and jurisprudence.

WHEREFORE, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Amended Decision dated December 27, 2017, rendered by the Third Division of this Court in CTA Case Nos. 8871, 8937, 8999 and 9042, and its Resolution dated May 3, 2018 are **AFFIRMED**. No pronouncement as to costs.

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[8] Amended Decision dated December 27, 2017, CTA Case Nos. 8871, 8937, 8999 and 9042, Division Docket, Vol. 6, pp. 2868-2881.

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SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTANEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice