REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

EDC BURGOS WIND POWER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9446

Members:

UY, *Chairperson*,
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

MAR 1 2 2021
2:48 p.m.

x - x

DECISION

RINGPIS-LIBAN, *J.*:

This is a Petition for Review filed by petitioner EDC Burgos Wind Power Corporation against respondent Commissioner of Internal Revenue on August 26, 2016, praying for the refund or issuance of a tax credit certificate in the amount of ₱33,903,404.70, representing its unutilized input taxes for the 1st and 2nd quarters of calendar year (CY) 2014 attributable to value-added tax (VAT) zero-rated sales of wind energy.[1]

THE PARTIES

Petitioner EDC Burgos Wind Power Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines under SEC Company Registration No. CS201005729.[2] It is a duly registered taxpayer with the Bureau of Internal Revenue (BIR), with Taxpayer Identification Number (TIN) 007-726-294-000.[3]

[1] Statement of the Case, Pre-Trial Order dated January 15, 2018, Docket – Vol. 2, p. 731.
[2] Exhibits "P-2", Docket – Vol. 2, pp. 907 to 918.
[3] Exhibit "P-6", Docket – Vol. 2, p. 937.

As a Renewable Energy (RE) Developer of Wind Energy Resources located in the Municipality of Burgos, Province of Ilocos Norte, Petitioner was issued Certificate of Registration No. WESC 2009-09-004 by the Department of Energy (DOE).[4]

Petitioner is likewise duly registered with the Board of Investments (BOI) as a New RE Developer of an 86 MW Wind Energy Power Generation Project (Burgos, Ilocos Norte) under Republic Act (RA) No. 9513 or the "Renewable Energy Act of 2008," with Certificate of Registration No. 2011-135.[5]

At the time that the Energy Regulatory Commission (ERC) granted Petitioner the Certificate of Compliance No. 15-04-M-00005L on April 13, 2015, Petitioner owned or operated a New Generation Facility, particularly, the Wind Power Plant located at Burgos, Ilocos Norte, with capacity of 87 MW (Phase I) and 63 MW (Phase II).[6]

On the other hand, Respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide, approve and grant refunds or tax credits of excess and unutilized input VAT, pursuant to the pertinent provisions of the Tax Code and other tax laws, rules, and regulations. He holds office at the BIR National Building, Agham Road, Diliman, Quezon City.[7]

THE FACTS

On March 30, 2016, Petitioner filed with the BIR an Application for Tax Credits/Refunds (BIR Form No. 1914) and cover letter evenly dated, requesting for the refund of or issuance of tax credit certificate for its alleged excess and unutilized input VAT amounting to ₱33,903,404.70, for the period covering January 1, 2014 to June 30, 2014.[8]

On July 19, 2016, Petitioner received the Letter of Authority (LOA) No. LOA-121-2016-000000020 from the BIR – Large Taxpayers Excise Audit Division I, authorizing the examination of its books of accounts and other accounting records for VAT for the 1st and 2nd quarters of CY 2014.[9]

---

[4] Exhibit "P-3", Docket – Vol. 2, p. 920.
[5] Exhibit "P-4", Docket – Vol. 2, pp. 921 to 930.
[6] Exhibit "P-5", Docket – Vol. 2, pp. 931 to 936.
[7] Par. 1, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 423.
[8] Exhibit "P-29", Docket – Vol. 3, p. 1126; Exhibit "P-28, Docket – Vol. 3, pp. 1124 to 1125.
[9] Par. 16, *Petition for Review,* vis-à-vis Par. 1, *Answer*, Docket – Vol. 1, pp. 13 to 14, and 144, respectively.

Thereafter, on July 27, 2016, Petitioner received the letter dated July 20, 2016 from Mr. Nestor S. Valeroso, Assistant Commissioner for Large Taxpayers Service of the BIR, denying Petitioner's administrative claim for refund.[10]

Petitioner filed the instant Petition for Review on August 20, 2016.[11] This case was initially raffled to this Court's First Division.

After the extensions given by the Court, Respondent filed his Answer on February 13, 2017,[12] interposing the following special and affirmative defenses, to wit:

a) claims for refund are not *ipso facto* granted upon its filing and Petitioner must prove its entitlement to the refund;

b) Petitioner failed to demonstrate that the amount of ₱33,903,404.70 being claimed for refund was erroneously or illegally collected;

c) Petitioner failed to submit complete documents in support of the application at the administrative level which warranted the denial by inaction of the administrative claim;

d) failure on the part of the taxpayer to file the administrative claim and submit relevant documents on administrative level, makes the administrative claim for tax refund or credit pro-forma and was construed as if no administrative claim was filed at all;

e) Petitioner failed to substantiate its claim for refund for the 1st and 2nd quarters of CY 2014 allegedly attributable to its VAT zero-rated sales of wind energy in the amount of ₱33,903,404.70 by failing to submit all the documents required by RMO No. 53-98;

f) the purpose of requiring the filing of the administrative claim for refund/tax credit and submission of supporting documents relevant to a claim for tax refund/credit is to give the administrative agency concerned the opportunity to ascertain the veracity and validity of the claim in accordance with the doctrine of exhaustion of administrative remedies;

---

[10] Par. 17, *Petition for Review,* vis-à-vis Par. 1, *Answer*, Docket – Vol. 1, pp. 14 and 144, respectively; Exhibit "P-31", Docket – Vol. 3, p. 1128.

[11] Docket – Vol. 1, pp. 10 to 19.

[12] Docket – Vol. 1, pp. 144 to 155; cf: *Motion for Extension of Time to File Answer*, Docket – Vol. 1, pp. 108 to 111; Resolution dated October 14, 2016, Docket – Vol. 1, p. 113; *Motion for Additional Time to File Answer*, pp. 115 to 118; Resolution dated November 16, 2016, Docket – Vol. 1, p. 122; *Motion to Declare Respondent in Default*, Docket – Vol. 1, pp. 132 to 138; *Motion to Admit Attached Answer*, Docket – Vol. 1, pp. 139 to 142; Resolution dated February 23, 2017, Docket – Vol. 1, pp. 158 to 159.

g) noncompliance with a condition precedent renders the Petition for Review dismissible;

h) 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;

i) in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

j) tax refunds/credits are in the nature of tax exemptions, hence, laws relating to them call for a strict application against the claimant; and

k) taxes collected are presumed to be in accordance with laws and regulations.

The Pre-Trial Conference was initially scheduled on May 11, 2017.[13] However, upon the filing of Respondent's Urgent Motion To Reset Hearing on May 10, 2017,[14] the Pre-Trial Conference was reset to June 28, 2017.[15] At the hearing held on this latter date, the Court cancelled the pre-trial; and reset and held the same on August 2, 2017.[16]

In the meantime, Petitioner's Pre-Trial Brief and Petitioner's Amended Pre-Trial Brief were submitted on May 8, 2017[17] and June 23, 2017,[18] respectively; while the Respondent's Pre-Trial Brief was filed on June 29, 2017.[19]

The parties then submitted their Joint Stipulation of Facts and Issues (JSFI) on September 11, 2017.[20] In the Resolution dated September 26, 2017,[21] the Court approved the said JSFI, and deemed the termination of the Pre-Trial.

Respondent transmitted the BIR Records to the Court on January 9, 2018.[22]

---

[13] Resolution dated February 23, 2017, Docket – Vol. 1, pp. 158 to 159.
[14] Docket – Vol. 1, pp. 345 to 347; Order dated May 11, 2017, Docket – Vol. 1, p. 349; Minutes of the hearing held on, and Order dated, August 2, 2017, Docket – Vol. 1, pp. 409 to 411 and 412 to 413.
[15] Order dated May 11, 2017, Docket – Vol. 1, p. 349.
[16] Minutes of the hearing held on, and Order dated, June 28, 2017, Docket – Vol. 1, pp. 384 to 389; Minutes of the hearing held on, and Order dated, August 2, 2017, Docket – Vol. 1, pp. 409 to 413.
[17] Docket – Vol. 1, pp. 319 to 344.
[18] Docket – Vol. 1, pp. 351 to 378.
[19] Docket – Vol. 1, pp. 390 to 393.
[20] Docket – Vol. 1, pp. 423 to 446.
[21] Docket – Vol. 1, p. 452.
[22] *Compliance* dated January 9, 2018, Docket – Vol. 1, pp. 476 to 477.

Thereafter, the Court issued the Pre-Trial Order dated January 15, 2018.[23]

Trial ensued.

During trial, Petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Charles Remy Capaque,[24] Tax Compliance Officer of the Energy Development Corporation; and (2) Mr. Reman A. Chua,[25] Petitioner's Vice President.

Petitioner filed its Formal Offer of Evidence (With Motion to Set Commissioner's Hearing) on July 30, 2018.[26] Respondent then submitted his Comment (Re: Petitioner's Formal Offer of Evidence) on August 3, 2018.[27]

Pursuant to the Order dated September 21, 2018,[28] this case was transferred to this Court's Third Division.

In the Resolution dated March 6, 2019,[29] the Court admitted Petitioner's documentary exhibits, *except* for Exhibits "P-132" and "P-133", for failure to identify the same.

Petitioner then filed a Motion for Reconsideration (Re: Resolution dated March 11, 2019) (With Motion for Leave to Recall Witness and Present Additional Evidence),[30] praying that the Court (1) reconsider its Resolution dated March 11, 2019[31]; and (2) set a hearing for the recall of Petitioner's witness, Mr. Capaque, for the identification of Petitioner's Exhibits "P-132" and "P-133" and the presentation of additional evidence. Respondent failed to file his comment on the said Motion for Reconsideration.[32] In the Resolution dated June 17, 2019,[33] the Court granted Petitioner's Motion for Leave to Recall Witness and Present Additional Evidence, and held in abeyance the resolution of Petitioner's Motion for Reconsideration (Re: Resolution dated March 11, 2019).

[23] Docket – Vol. 2, pp. 731 to 744.
[24] Exhibit "P-201", Docket – Vol. 2, pp. 489 to 513; Order dated January 18, 2018, Docket – Vol. 2, pp. 750 to 751.
[25] Exhibit "P-202", Docket – Vol. 2, pp. 820 to 825; Order dated June 19, 2018, Docket – Vol. 2, pp. 833 to 834.
[26] Docket – Vol. 2, pp. 843 to 887.
[27] Docket – Vol. 3, pp. 1176 to 1178.
[28] Docket – Vol. 3, p. 1186.
[29] Docket – Vol. 3, pp. 1188 to 1189.
[30] Docket – Vol. 3, pp. 1190 to 1197.
[31] Actually referring to this Court's Resolution dated March 6, 2019.
[32] Records Verification Report dated May 2, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. 3, p 1200.
[33] Docket – Vol. 3, pp. 1204 to 1207.

Thereafter, Petitioner recalled to the witness stand Mr. Capaque,[34] who testified in full. On August 23, 2019, Petitioner filed its Supplemental Formal Offer of Evidence.[35] In the Resolution dated September 26, 2019,[36] the Court granted Petitioner's Motion for Reconsideration (Re: Resolution dated March 11, 2019), and admitted Exhibit's "P-132" and "P-133", as well as the other Exhibits stated in its Supplemental Formal Offer of Evidence.

Respondent also presented his testimonial and documentary evidence. Respondent proffered the testimony of his lone witness, Ms. Cletofel Parungao,[37] a Revenue Officer of the BIR.

On November 18, 2019, Respondent filed his Formal Offer of Evidence.[38] Petitioner then filed its Comment (To Respondent's Formal Offer of Evidence) on December 16, 2019.[39] In the Resolution dated February 4, 2020,[40] the Court admitted Respondent's Exhibits, and gave the parties thirty (30) days from receipt thereof to file their respective memoranda.

Respondent filed his Memorandum on March 9, 2020;[41] while Petitioner submitted its Memorandum on July 1, 2020.[42]

The instant case was deemed submitted for decision on July 13, 2020.[43]

THE ISSUES

The parties raised this lone issue for the Court's resolution, to wit:

> "Whether or not Petitioner is entitled to the refund of or issuance of a tax credit certificate for the amount of ₱33,903,404.70 representing its unutilized input VAT for the 1st and 2nd quarters of CY 2014 attributable to its zero-rated sales of power generated from renewable sources of energy."[44]

---

[34] Exhibit "P-203", Docket – Vol. 3, pp. 1216 to 1221; Minutes of the hearing held on, and Order dated, August 13, 2019, 2017, Docket – Vol. 3, pp. 1231, and 1234 to 1235, respectively.
[35] Docket – Vol. 3, pp. 1236 to 1243.
[36] Docket – Vol. 3, pp. 1254 to 1256.
[37] Exhibit "R-7", Docket – Vol. 2, pp. 774 to 780; Minutes of the hearing held on, and Order dated, November 12, 2019, 2017, Docket – Vol. 3, pp. 1257 to 1259.
[38] Docket – Vol. 3, pp. 1260 to 1263.
[39] Docket – Vol. 3, pp. 1271 to 1279.
[40] Docket – Vol. 3, pp. 1283 to 1284.
[41] Docket – Vol. 3, pp. 1285 to 1291.
[42] Docket – Vol. 3, pp. 1293 to 1320.
[43] Resolution dated July 13, 2020, Docket – Vol. 3, p. 1322.
[44] Stipulated Issue, JSFI, Docket – Vol. 1, p. 424.

THE ARGUMENTS OF THE PARTIES

Petitioner argues that it is a registered VAT taxpayer; that it had zero-rated sale of services; that it paid or incurred input taxes attributable to its sale of renewable energy; that the input taxes being claimed for refund were not applied against Petitioner's output VAT liability during the period of the claim and the succeeding taxable periods; and that Petitioner filed its administrative and judicial claims for refund or issuance of tax credit certificate within the prescriptive period provided in the Tax Code.

On the other hand, Respondent contends that the Petition must be dismissed for failure of Petitioner to substantiate its claim for refund; that Petitioner is not entitled to the refund sought; and that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, are looked upon with disfavor.

THE RULING OF THE COURT

The instant Petition for Review lacks merit.

Petitioner failed to show that Respondent should not have denied its administrative claim in the first place.

In the *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* (*Pilipinas Total Gas* case),[45] the Supreme Court said:

> "At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*,[46] it was ruled –
>
> > x x x **First, a judicial claim for refund or tax credit in the CTA is <u>by no means an original action</u> but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, <u>as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claim</u>. In this case, <u>it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all</u>**

[45] G.R. No. 207112, December 8, 2015.
[46] G.R. No. 145526, March 16, 2007.

> **the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.

A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but of the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirement for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.** Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA." *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements of the High Court, it is now settled that when a judicial claim for refund or tax credit before this Court is an appeal of an unsuccessful administrative claim, the taxpayer has to convince this appellate court that Respondent had no reason to deny its claim; and it is necessary for a petitioner to show this Court not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. As stated, it **is crucial for a taxpayer in a judicial claim for refund or tax credit to show** that its **administrative claim should have been granted in the first place.**

A careful reading of Petitioner's pleadings filed before this Court would reveal that Petitioner presented its case as if its administrative claim was never acted upon or that there was no decision for this Court to review on appeal *per se*. In other words, Petitioner presented its case before this Court as if it was an original action, despite the fact that Respondent or the BIR had explicitly denied its administrative claim. Petitioner did not specifically assail the reason or basis why its administrative claim was denied in the first place by Respondent. It never argued or proved that the said reason or basis was not justified in law.

Pertinently, in the letter dated July 20, 2016,[47] the BIR denied Petitioner's administrative claim in this manner, *viz.*:

> "Verification of the submitted original and amended VAT Returns for the 1st and 2nd quarters of 2014 disclosed that the total input tax for current transactions and Creditable VAT Withheld amounted to ₱33,903,404.70, however, no sale subject to zero-rate was reported for the same taxable quarter/periods.
>
> Applying the provisions of Sec. 112 (A) of the NIRC, since no zero-rated sales were made during the taxable quarter, there is no creditable input tax attributable to such zero-rated sales. Hence, the unutilized input taxes for the period cannot be claimed as refund.
>
> In view of the above, this office holds that **EDC Burgos Wind Power Corporation**, is not entitled to a refund of unutilized input taxes for the period January 1 to June 2014 in the amount **Philippine Pesos: Thirty Three Million Nine Hundred Three Thousand Four Hundred Four & 70/100 (₱33,903,404.70)** because such claim has no legal basis."

In view of the foregoing determination, Petitioner should have specifically argued and proven that the findings of Respondent that no zero-rated sales were reported and made during the period under consideration were erroneous and had no leg to stand on.

Having failed to show that Respondent should *not* have denied its administrative claim in the first place, the instant Petition for Review must already be denied. In any event, even if the Court ignored the ruling in the *Pilipinas Total Gas* case, the instant judicial claim would still be unmeritorious.

In order for Petitioner to have a valid claim for refund of unutilized input VAT for the subject period, it is imperative that compliance with certain legal requisites be proven. This, Petitioner failed to do, particularly, with regard to the

[47] Exhibit "P-31", Docket – Vol. 3, p. 1128.

existence of zero-rated or effectively zero-rated sales. Thus, *We* affirm Respondent's decision denying Petitioner's administrative claim.

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

Section 112 (A) and (C) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337,[48] 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 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.
>
> x x x x x x x x x
>
> (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.

[48] 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.

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

Timeliness of the filing of the administrative and judicial claims:

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[49]

2. 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 120 days from the date of submission of complete documents in support of the application, the judicial claim must be filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[50]

Taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[51]

Taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[52]

5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[53]

---

[49] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 182364, August 3, 2010.

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

[51] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue,* supra; and *AT&T Communications Services Philippines, Inc.,* supra.

[52] *Id.*

[53] *Id.*

Taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[54]

7. the input taxes are due or paid;[55]

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;[56]

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[57]

Relative thereto, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[58] Thus, it behooves Petitioner to show compliance with each of the foregoing requisites.

Petitioner's administrative and judicial claims were timely filed.

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

The present claim covers input taxes incurred in the 1st and 2nd quarters of CY 2014, while the alleged relevant zero-rated sales were made during the 1st quarter of CY 2015 that closed on March 31, 2015. Counting two years from the said date, Petitioner had until March 31, 2017 within which to file its administrative claim for tax credit/refund. Accordingly, Petitioner's

---

[54] *Id.*

[55] *Id.*

[56] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue,* supra.

[57] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue,* supra; and *AT&T Communications Services Philippines, Inc.,* supra.

[58] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank,* G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

administrative claim for refund was seasonably filed within the two-year prescriptive period, as shown below:

Taxable quarter when the input tax was incurred	Taxable quarter when the alleged relevant sale was made	Close of the taxable quarter	End of two (2) years	Date of filing of administrative claim
1st Quarter of 2014	1st Quarter 2015	March 31, 2015	March 31, 2017	March 30, 2016[59]
2nd Quarter of 2014				

The *second* requisite is that the judicial claim must have been filed within thirty (30) days from 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.

From the filing of Petitioner's administrative claim on March 30, 2016, Respondent had one hundred twenty (120) days or until July 28, 2016 to act on the said claim. On July 27, 2016, however, Petitioner received a letter dated July 20, 2016 from Respondent denying Petitioner's claim.[60] Thus, the judicial appeal via the instant Petition for Review filed on August 20, 2016 was timely filed.

Such being the case, Petitioner clearly complied with the *first* and *second* requisites.

Petitioner's is a VAT-registered person.

As for its compliance with the *third* requisite, Petitioner has fulfilled the same by presenting its BIR Certificate of Registration No. OCN8RC0000047894 dated April 28, 2010 with TIN 007-726-294-000.[61]

Petitioner failed to establish that its declared sales/receipts for the subject period of claims qualify for VAT zero-rating.

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

[59] Exhibit "P-29", Docket – Vol. 3, p. 1126; Exhibit "P-28, Docket – Vol. 3, pp. 1124 to 1125.
[60] Exhibit "P-31", Docket – Vol. 3, p. 1128.
[61] Exhibit "P-6", Docket – Vol. 2, p. 937.

In its Amended Quarterly VAT Return for the 1st Quarter of CY 2015,[62] Petitioner's total declared sales/receipts amounted to ₱384,474,309.49 which consisted solely of zero-rated sales/receipts. However, the Court is convinced that the sales/receipts fail to qualify for VAT zero rating.

Petitioner argues that since its sales pertain to energy generated through wind, a renewable source of energy, the same should be considered zero-rated, pursuant to Section 108(B)(7), Tax Code.

We disagree.

Section 108(A) of the NIRC of 1997, as amended by RA No. 9337, reads, in part, as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) *Rate and Base of Tax.* – **There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services,** including the use or lease of properties: *Provided*, That the President, upon recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
>
> x x x x x x x x x
>
> The phrase ***'sale or exchange of services'*** means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including...**sales of electricity by generation companies, transmission, and distribution companies**; xxx." *(Emphases and italics added)*

Based on the foregoing provision and since the sale of electricity by generation companies, transmission, and distribution companies fall under the purview of the phrase *"sale or exchange of service"*, such sale is generally subject to the 12% VAT rate.

However, Section 108(B)(7) of the NIRC of 1997, as amended by RA No. 9337, provides, *inter alia*, that **the sale of power <u>generated through renewable sources of energy, such as wind</u>, may be subjected to the zero percent (0%) VAT**, to wit:

[62] Exhibit "P-9-c", Docket – Vol. 2, pp. 964 to 965.

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

x x x x x x x x x

(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 added)*

To implement the foregoing provision, Section 4.108-3(f) of RR No. 16-2005 provides as follows:

"SEC. 4.108-3. Definitions and Specifics Rules on Selected Services. –

x x x x x x x x x

(f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10%[63] VAT on their gross receipts; *Provided*, That **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 **shall be subject to 0% VAT.**

'Generation companies' **refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA No. 9136 (EPIRA).** They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities. x x x" *(Emphases and underscoring added)*

[63] The VAT rate has been increased to 12%. Refer to Memorandum dated January 31, 2006 from the Executive Secretary, as circulated in Revenue Memorandum Circular No. 7-2006.

Thus, in relation to the RA No. 9136 (EPIRA), for the sale of power through renewable sources of energy by a generation company to be subject to the zero percent (0%) VAT under Section 108(B)(7) of the NIRC of 1997, as amended by RA No. 9337, the said generation company must be so authorized by the ERC to operate facilities used in the generation of electricity.

Relative thereto, Section 6 of RA No. 9136 (EPIRA) provides, in part, as follows:

> "SEC. 6. *Generation Sector.* – Generation of electric power, a business affected with public interest, shall be competitive and open.
>
> Upon the effectivity of this Act, **any new generation company shall, <u>before it operates</u>, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act**, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> x x x x x x x x x
>
> **Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value-added tax zero-rated."** *(Emphases added)*

Based on the foregoing provision, generation companies must first secure a certificate of compliance with the ERC prior to its operations for its sales of generated power to be treated as VAT zero-rated.

Relative thereto, the implementing rules and regulations of EPIRA provide:

> <u>Section 1, Rule 5, of the Rules and Regulations To Implement RA No. 9136</u>:
>
> "Section 1. Guiding Principle.
>
> Pursuant to Section 6 of the Act, generation of electric power, a business affected with public interest, shall be competitive and open to all qualified Generation Companies. Generation shall not be considered a public utility operation. For this purpose, any Person engaged or intending to engage in Generation of Electricity shall not be required to secure a national franchise.

No Person may engage in the Generation of Electricity as a new Generation Company <u>unless such Person has received a COC from the ERC</u> to operate facilities used in the Generation of Electricity. A Person that demonstrates compliance with the standards and requirements of this Rule 5, and such other terms and conditions as determined by the ERC to be appropriate to ensure that Persons comply with all applicable legal and regulatory requirements, shall be issued a COC." *(Emphasis and underscoring added)*

<u>Section 2(iii) of 2014 Revised Rules For the Issuance of Certificates of Compliance (COCs) For Generation Companies, Qualified End-Users and Entities With Self-Generation Facilities</u>:

"Section 2. Guiding Principle.

xxx xxx xxx

iii. **A COC shall be secured from the ERC <u>before the actual Commercial Operations</u> of the Generation Facility/ies. For new Generation Facilities, the Generation Company may conduct Test and Commissioning for a maximum period of two (2) months even without a COC and the sale of the generated output during Commissioning shall <u>not</u> be considered as transactions made during Commercial Operations.** Beyond this period, however, the sale of generated output shall already be deemed as transactions made during Commercial Operations for which a COC shall be required. xxx." *(Emphasis and underscoring added)*

Based on the foregoing, it is clear that no person may engage in the generation of electricity as a new generation company ***unless*** such person has received a COC from the ERC to operate facilities used in the generation of electricity. Moreover, the same COC must be secured from the ERC ***before*** the actual commercial operations of the concerned generation facility. The new generation company is allowed to conduct tests and commissioning for a maximum period of two (2) months even without the required COC, and the sale of the generated output during the said commissioning shall not be considered as transactions made during commercial operations. However, beyond the said two-month period, the sale of generated output shall already be deemed as transactions made during commercial operations by the generation company for which a COC from the ERC is required.

In addition, being statutes *in pari materia* insofar as the treatment of VAT zero-rating is concerned, the earlier quoted Section 108(B)(7) of the NIRC of

1997, as amended by RA No. 9337, and Section 6 of RA No. 9136, including their respective implementing rules and regulations, must be read together and harmonized with Sections 15(g), 25, and 26 of RA No. 9513 (Renewable Energy Act of 2008), which provide 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:
>
> x x x x x x x x x
>
> (g) Zero Percent Value Added-Tax Rate. – **The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337**." *(Emphasis supplied)*
>
> "SECTION 25. *Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment.* – **RE Developers** and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment **shall register with the Department of Energy, through the Renewable Energy Management Bureau. Upon registration, a certification shall be issued to each RE Developer** and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment **to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act**." *(Emphasis supplied)*
>
> "SECTION 26. *Certification from the Department of Energy.* – **All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy Management Bureau**.
>
> The DOE, through the Renewable Energy Management Bureau shall issue said certification fifteen (15) days upon request of the renewable energy developer or manufacturer, fabricator or supplier: *Provided*, That the certification issued by the Department

of Energy shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned." *(Emphasis supplied)*

Relative thereto, Part III, Rule 5 of the Implementing Rules and Regulations of RA No. 9513,[64] 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

A. Registration/Accreditation with the DOE

For purposes of entitlement to the incentives and privileges under the Act, 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 pre-terminate 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.

---

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

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.

x x x x x x x x x."

In view of all the foregoing provisions, to qualify for VAT zero-rating in the sale of power generated through renewable sources of energy, such as wind, the seller must secure the following:

(1) **Certificate of Registration** issued by the DOE;
(2) **Certificate of Registration** issued by the BOI;
(3) **Certificate of Endorsement** issued by the DOE; and
(4) **Certificate of Compliance** (COC) issued by the ERC, secured *before* actual Commercial Operations by the generation company.

In this case, Petitioner was able to present its Certificate of Registration No. WESC 2009-09-004 dated February 4, 2011 issued by the DOE, certifying that it is an RE Developer of Wind Energy Resources located in the Municipality of Burgos, Province of Ilocos Norte. [65]

Petitioner was also able to submit its BOI Certificate of Registration No. 2011-135 dated June 29, 2011 certifying that it is a New Renewable Energy Developer of an 86 MW Wind Energy Power Generation Project (Burgos, Ilocos Norte) under RA No. 9513, together with its "SPECIFIC TERMS AND CONDITIONS" and "GENERAL TERMS AND CONDITIONS."[66]

However, a review of the records shows that Petitioner failed to establish that a Certificate of Endorsement was issued to it by the DOE, through the Renewable Energy Management Bureau (REMB), for any of its transactions. Moreover, although Petitioner was able to submit a Certificate of Endorsement for Feed-in Tariff Eligibility COE-FIT No. W-2014011-002 from the DOE,[67] certifying that the DOE endorses Petitioner's 150-MW Burgos Wind Power Project (Phase I – 87 MW & Phase II – 63 MW) located at Burgos, Ilocos Norte, as an eligible project under the Feed-In Tariff (FIT) System pursuant to the provisions of RA No. 9513, among others, the Court notes that said Certificate of Endorsement was only issued on November 11, 2014, which is obviously outside the period of claims (1st and 2nd quarters of CY 2014). To be clear, no evidence was presented in this case to establish that Petitioner was given a Certificate of Endorsement by the DOE for the subject period of claims.

Moreover, while Petitioner was able to secure a COC from the ERC in its favor,[68] the same was issued only on April 13, 2015, or *after* the commencement of its commercial operation on November 11, 2014.[69]

Thus, for the failure of Petitioner to present the required DOE Certificate of Endorsement, and to secure a COC from the ERC before its actual operation, its reported zero-rated sales/receipts in the aggregate amount of ₱384,474,309.49, 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 claim for input VAT refund. Such being the case, it becomes unnecessary to address Petitioner's compliance with the other requisites.

[65] Exhibit "P-3", Docket – Vol. 2, p. 920.
[66] Exhibit "P-4", Docket – Vol. 2, pp. 921 to 930.
[67] Exhibit "P-32", Docket – Vol. 3, p. 1129.
[68] Exhibit "P-5", Docket – Vol. 2, pp. 931 to 936.
[69] Refer to Exhibit "P-32", Docket – Vol. 3, p. 1129.

In sum, the instant Petition for Review must be denied because Petitioner failed to show that it was entitled under substantive law to the grant of its claim, and that its administrative claim should have been granted in the first place.

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**.[70]

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **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's Division.

ERLINDA P. UY
Associate Justice

[70] *Coco-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's Chairperson's Attestation, 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice