REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CBK POWER COMPANY LIMITED, *Petitioner,*	**CTA Case No. 10379**
	Members: **MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUL 1 1 2024 3:30 p.m.

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DECISION

REYES-FAJARDO, J.:

Before the Court is a Petition for Review[1] filed by CBK Power Company Limited (CBK Power) on October 19, 2020, against Commissioner of Internal Revenue seeking the refund of or issuance of a tax credit certificate (TCC) amounting to ₱47,237,298.60 representing alleged unutilized input value-added tax (VAT) attributable to zero-rated sales of electricity to the National Power Corporation (NPC) relative to the first, second, third, and fourth quarters of calendar year (CY) 2018.

FACTS

Petitioner CBK Power Company Limited is a limited partnership registered with the Philippine Securities and Exchange Commission.[2] It is also registered with the Bureau of Internal Revenue (BIR) as a VAT entity under Tax Identification Number (TIN) 205-760-474-00000, with address at NPC-CBK Compound, Purok 6, National Highway, San Juan (Pob), Kalayaan, Laguna, Philippines 4015.[3] It is engaged in the

1 Docket, pp. 6-58.
2 Exhibits "P-11" and "P-12".
3 Exhibit "P-13".

business power generation through its hydroelectric power plant.[4] By virtue of an Undertaking[5] and a Build-Rehabilitate-Operate-Transfer (BROT) Agreement,[6] the electricity thus generated is sold subsequently to the NPC.[7]

Respondent is the head of the BIR empowered to perform the duties of the office, including acting upon and approving claims for refund or tax credit. Its office address is at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[8]

Tax Returns

1) Output VAT

For the four quarters of CY 2018, CBK Power filed Quarterly VAT Returns (BIR Form No. 2550-Q) and reported total sales of ₱2,988,123,958.98, which included zero-rated sales of ₱2,986,030,302.05 as follows:

CY 2018 Quarter	VATable Sales	Zero-rated Sales	Total Sales	Exhibit
First	₱670,433.88	₱726,073,003.65	₱726,743,437.53	P-104
Second	632,325.61	745,661,248.85	746,293,574.46	P-105
Third	380,158.76	760,578,585.67	760,958,744.43	P-106
Fourth	410,738.68	753,717,463.88	754,128,202.56	P-107
Total	₱2,093,656.93	**₱2,986,030,302.05**	**₱2,988,123,958.98**	

Correspondingly, CBK Power reported output VAT from its sales subject to VAT amounting to ₱80,452.07,[9] ₱75,879.07,[10] ₱45,619.07,[11] and ₱49,288.65[12] in the first, second, third, and fourth quarters of CY 2018, respectively.

2) Input VAT

4 Admitted by CIR in Par. 8, *Answer*, Docket – Vol. III, p. 1155.
5 Exhibit "P-9."
6 Exhibit "P-8."
7 Admitted by CIR in Par. 8, *Answer*, Docket – Vol. III, p. 1155.
8 Par. 4, Facts Admitted, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. III, p. 1380.
9 Exhibit "P-104," Line 15B.
10 Exhibit "P-105," Line 15B.
11 Exhibit "P-106," Line 15B.
12 Exhibit "P-107," Line 15B.

On the other hand, it also declared a total input VAT of **₱45,961,730.84** from its *current period* domestic purchases and importations of goods and purchases of services, detailed as follows:

	Line	First	Second	Third	Fourth	Total
Input taxes on goods other than capital goods						
Domestic purchases of goods	21F	₱1,092,163.73	1,410,096.20	1,810,711.10	2,648,990.03	₱6,961,961.06
Importations	21H	₱65,985.00	58,403.00	10,490.00	106,573.00	241,451.00
Input taxes on services						
Domestic purchases of svcs.	21J	₱7,666,764.43	15,357,447.22	5,910,167.00	5,524,846.59	34,459,225.24
Services rendered by NRs*	21L	₱1,074,266.84	-	-	26,952.34	1,101,219.18
Input taxes on capital goods						
Not exceeding P1 million	21B			₱79,070.36		79,070.36
Exceeding P1 million						
Deferred from previous qtr.	20B	₱5,395,425.77	₱8,611,067.20	₱9,727,229.54	₱13,440,333.56	
Current prd. purchases	21D	3,761,618.27	1,759,311.71	4,532,264.45	7,960,127.52	
Less: Deferred for succeeding prd.	23A	8,611,067.20	9,727,229.54	13,440,333.56	20,289,943.72	
		₱545,976.84	643,149.37	819,160.43	1,110,517.36	3,118,804.00
Total						**₱45,961,730.84**

*Non-residents.

3) VAT Payable

On account of the excess of input over output VAT, CBK Power reported net VAT *overpayment* amounting to ₱69,357,464.75, ₱86,750,681.47, ₱95,334,661.29, and ₱88,285,313.75, for the first, second, third, and fourth quarters of CY 2018, respectively.

Proceedings before the BIR.

On June 26, 2020, CBK Power filed before the BIR an Application for Tax Credits/Refunds (BIR Form No. 1914),[13] accompanied by a letter of even date[14] (**administrative claim**). It averred as follows: *First,* it incurred excess and/or unutilized input VAT attributable to its zero-rated sales. The BIR already confirmed that CBK Power's sales of hydroelectric power to NPC is zero-rated through BIR Ruling No. DA-146-06 dated March 17, 2006. *Second,* it is entitled to the refund or credit of excess input VAT relative to the first, second, third, and fourth quarters of CY 2018 in the aggregate amount of **₱47,237,298.60,** computed as follows:

[13] Exhibit "P-2."
[14] Exhibit "P-1."

The CIR[15] denied CBK Power's administrative claim. The latter received a copy of this denial on September 21, 2020. Hence, it filed the present Petition for Review on October 19, 2020 (**judicial claim**).[16]

Proceedings before the Court.

The CIR filed an Answer[17] and submitted the BIR Records of the case on January 15, 2021 and January 19, 2021,[18] respectively.

After the parties' submission of their respective pre-trial briefs[19] and the conduct of a pre-trial conference,[20] the Court resolved to approve the parties' Joint Stipulation of Facts and Issues[21] and issued a Pre-Trial Order dated March 15, 2022.[22]

During trial, the following persons testified for CBK Power: (1) (1) Mr. Fernando J. Dela Paz, Chief Financial Officer;[23] (2) Mr. Joey L. Polintan, Accounting Director;[24] and (3) Ms. Myra Celeste O. Dabalos,[25] the Court-commissioned Independent Certified Public Accountant (ICPA).[26]

The ICPA Report and the amendment thereto were submitted on April 18, 2022[27] and June 2, 2022,[28] respectively.

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15 Through Mr. Manuel V. Mapoy, Assistant Commissioner, Large Taxpayers Service.
16 Par. 3, Facts Admitted, JSFI, Docket - Vol. III, p. 1380.
17 Docket - Vol. III, pp. 1154 to 1162.
18 Respondent's *Compliance* dated January 11, 2021, Docket - Vol. III, pp. 1286 to 1289.
19 For petitioner, Docket - Vol. III, pp. 1300 to 1331; for respondent, Docket - Vol. III, pp. 1334 to 1337.
20 Resolution dated January 29, 2021, Docket - Vol. III. p. 1293; Notice of Pre-Trial Conference dated February 4, 2021, Docket - Vol. III. p. 1294 to 1296; Notice of Resetting, Docket - Vol. III, p. 1343; Minutes of the hearing held on and Order dated October 7, 2021, Docket - Vol. III, pp. 1353 to 1357.
21 Docket - Vol. III, pp. 1378 to 1394.
22 Docket - Vol. IV, pp. 1707 to 1735.
23 Exhibit "P-63", Docket - Vol. III, pp. 1451 to 1463; Minutes of the hearing held on, and Order dated, March 3, 2022, Docket - Vol. IV, pp. 1687 to 1690, and 1692 to 1694, respectively.
24 Exhibit "P-64", Docket - Vol. I, pp. 392 to 416; Minutes of the hearing held on, and Order dated, March 3, 2022, Docket - Vol. IV, pp. 1687 to 1690, and 1692 to 1694, respectively.
25 Exhibit "P-193", Docket - Vol. IV, pp. 1864 to 1904; Minutes of the hearing held on, and Order dated, June 9, 2022, Docket - Vol. IV, pp. 1964 to 1965-B.
26 *Oath of Commission* dated March 3, 2022, Docket - Vol. IV, p. 1691; Minutes of the hearing held on, and Order dated, March 3, 2022, Docket - Vol. IV, pp. 1687 to 1690, and 1692 to 1694, respectively.
27 Docket - Vol. IV, pp. 1743 to 1797.
28 Exhibit "P-189", Docket - Vol. IV, pp. 1802 to 1857.

CBK Power filed its Formal Offer of Evidence[29] on July 7, 2022. After considering the CIR's Comment[30] thereon, the Court resolved[31] to admit petitioner's exhibits, with the exception of those that were not found in the records and those the originals of which were not presented for comparison. While CBK Power moved for reconsideration, the Court merely noted[32] the manifestations and resubmissions stated in said Motion, taken that the subject exhibits were already admitted previously.

For its part, the CIR presented the testimony of Revenue Officer Nimfa P. Saga.[33] Subsequently, the Court admitted all exhibits offered by the CIR.[34]

After the parties filed their respective Memoranda,[35] the case was submitted for decision on July 11, 2023.[36]

ISSUE

The Court is tasked to ascertain CBK Power's entitlement to a refund of alleged unutilized input VAT attributable to zero-rated sales relative to the four quarters of CY 2018.

Petitioner's Arguments.

CBK Power anchors its claim on Sections 108(B)(7), 112(A) and (C) of the National Internal Revenue Code, as amended (NIRC). At the outset, it points out that it is not registered with the Department of Energy (DOE) under Republic Act (RA) No. 9513; nor has it availed of the incentives provided under the said law. Further, it has complied with all the requirements in order to be entitled to the subject refund; more particularly, its sales of hydroelectric power to NPC is subject to VAT at zero percent (0%), as already confirmed by the BIR in Ruling No. DA-146-06 dated March 17, 2006.

29 Docket - Vol. IV, pp. 1970 to 2095.
30 Docket - Vol. IV, pp. 2098 to 2100.
31 In a Resolution dated August 26, 2022, Docket - Vol. IV, pp. 2103 to 2108.
32 In a Resolution dated January 6, 2023, Docket - Vol. IV, pp. 2223 to 2230.
33 Docket - Vol. IV, pp. 2223 to 2230.
34 In a Resolution dated May 26, 2023; Docket - Vol. IV, pp. 2249 to 2250.
35 For respondent, Docket - Vol. IV, pp. 2252 to 2263; for petitioner, Docket - Vol. IV, pp. 2266 to 2314.
36 Minute Resolution dated July 11, 2023, Docket - Vol. IV, p. 2318.

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Respondent's Arguments.

On the other hand, the CIR insists that CBK Power failed to substantiate its claim and that it is not the proper party to seek the refund. Thus, it is not entitled to the refund sought.

OUR RULING

CBK Power's Petition for Review is partly meritorious.

CBK Power's claim shall be evaluated based on the requisites under Section 112(A) of the Tax Code, not RA No. 9513.

Section 15(g) of RA No. 9513, otherwise known as the Renewable Energy Act of 2008, provides that the purchases by renewable energy developers shall subject to VAT at zero percent, *viz.*:

> 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:
>
> (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.
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> **All RE Developers shall be entitled to zero-rated value-added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.**
>
> **This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.** (Emphasis supplied)

Hence, according to the CIR, no output tax should be shifted or passed on to CBK Power, as a renewable energy developer, in connection with its purchases of goods and services needed for the development, construction, and installation of plant facilities, as well as the whole process of exploration and development of renewable energy sources up to its conversion into power.[37] As CBK Power did not pay input tax on its purchases, necessarily, it is not entitled to a refund with respect thereto.[38] It is not even the proper party to claim for a refund or credit.[39]

We disagree with the CIR.

CBK Power's claim is not anchored on RA No. 9513, but on Section 112(A) of the Tax Code. And even if it relied on the incentives granted by Section 15(g) of RA No. 9513, CBK Power cannot be entitled thereto. **It is already established that it is not registered with the DOE**; only renewable energy developers registered with the DOE and certified as such in accordance with RA No. 9513 shall claim the fiscal incentives under Section 15(g) thereof.

Precisely, this was the Supreme Court's ruling in *CBK Power Company Limited v. Commissioner of Internal Revenue,*[40] *viz.*:

> It is therefore clear error to conclude that all RE Developers are entitled to the fiscal incentives granted by Republic Act No. 9513. The law, as enforced through the DOE IRR, is categorical that RE Developers must meet certain standards and must register with the DOE before it can be considered as an RE Developer duly entitled to fiscal incentives.
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> x x x
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> Consistent with the DOE IRR, Section 3 lists the following certifications which must be obtained before an RE Developer can avail of the fiscal incentives under Republic Act No. 9153: DOE Certificate of Registration, DOE Certificate of Accreditation, Certificate of Endorsement by the DOE, Registration with the BOI, and Certificate of Income Tax Holiday Entitlement.
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> x x x

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37 Par. 13 of the *Answer*, Docket - Vol. III, pp. 1156-1157.
38 Par. 14 of the *Answer*, Docket - Vol. III, p. 1157.
39 Par. 19 of the *Answer*, Docket - Vol. III, p. 1158.
40 G.R. No. 247918, February 1, 2023.

> Thus, the express language of Republic Act No. 9513, coupled with the DOE and the BIR's consistent contemporaneous interpretation, leads to the conclusion that **an RE Developer can only avail of the fiscal incentives under Republic Act No. 9513, including VAT at zero rate, after registration with the DOE and the DOE's issuance of the corresponding certificate,** in addition to the other requirements provided in the DOE IRR and RR No. 7-2022.
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> **Here, there is nothing in the record that would show that CBK registered with the DOE, let alone registered with the BOI and obtained all the necessary certificates required under Republic Act No. 9513 and the DOE IRR. <u>In fact, CBK has consistently stated in its pleadings both in the CTA and before the Court that it has not registered with the DOE and is thus not entitled to VAT at zero rate</u>.** Notably, the CIR admits this in its Comment.
>
> Thus, the CTA En Banc erred in ruling that CBK is covered by Republic Act No. 9513 and is entitled to VAT at zero rate for its transactions. CBK's transactions [purchases], in fact, are subject to 12% VAT, as it correctly asserts. (Emphasis supplied, citations omitted)

In the present case, DOE certified[41] that CBK Power is <u>not</u> registered with said agency under RA No. 9513; it has not availed of the fiscal incentives thereunder, nor has it applied for any similar availments. The CIR did not refute these certifications and even appears to have acknowledged, in the ruling[42] that denied the administrative claim, that CBK Power is not registered with the DOE for purposes of availing fiscal incentives under RA No. 9513. Thus, the above-quoted Supreme Court pronouncement applies squarely to this case.

CBK Power is entitled to a <u>partial</u> refund or credit.

We grant CBK Power a refund or credit to the extent of ₱43,392,222.94.

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41 Certification dated July 25, 2019, signed by Mylene C. Capongcol, Officer-in-Charge, DOE Renewable Energy Management Bureau (Exhibit "P-5"); Certification dated August 15, 2019, signed by Mylene C. Capongcol, Officer-in-Charge, DOE Renewable Energy Management Bureau (Exhibit "P-6"); Certification dated February 5, 2020, signed by Mylene C. Capongcol, Officer-in-Charge, DOE Renewable Energy Management Bureau (Exhibit "P-7").

42 Letter dated September 7, 2020, Exhibit "R-4."

Chevron Holdings, Inc. v. Commissioner of Internal Revenue[43] sets out the requisites for a grant of refund or credit of unutilized input VAT attributable to zero-rated sales, *viz.*:

> Under Section 112 (A) of the Tax Code, the taxpayer may claim for refund or issuance of tax credit certificate of unutilized input VAT attributable to zero-rated sales subject to the following conditions: (1) the taxpayer is VAT-registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

1) VAT Registration.

CBK Power's VAT registration is established by its Certificate of Registration[44] with TIN 205-760-474-00000.

2) VAT Zero-Rating.

CBK Power asserts that the input VAT it seeks to refund is attributable to its sales of electricity to NPC, which they regard as zero-rated sales. Significantly, in BIR Ruling No. DA-146-06 dated March 17, 2006, **the CIR[45] already <u>confirmed</u> CBK Power's zero-rating with respect to these sales,** *viz.*:

> From the foregoing circumstances, there is no dispute that CBK is primarily organized to engage in power generation business, specifically in hydropower generation, i.e., generating/supplying electric power generated through hydropower, a renewable source of energy. This is fortified by the Certificate of Compliance issued by the Energy Regulatory Commission (ERC) that CBK is indeed a hydropower generation company. **Thus, the billings of CBK for its sale of electricity to NPC, designated under the BROT Agreement as Capital Recovery Fees and O&M Fees, are subject to zero percent (0%) VAT.**
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> x x x

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[43] G.R. No. 215159, July 5, 2022.
[44] Exhibit "P-13."
[45] Through James H. Roldan, Assistant Commissioner, BIR Legal Service.

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> It is noteworthy that while the aforesaid ruling is anchored on Section 108(B)(3) of the Tax Code of 1997 which is premised on NPC's exemption from direct and indirect taxes, this Office takes cognizant of the rule that the said exemption had already been expressly repealed, notably under Section 24(A) of R.A. No. 9337 insofar as VAT is concerned. **However, this Office cannot close its eyes that the sale/supply of electricity by CBK to NPC continues to be zero-rated under Section 108(B)(7) of R.A. No. 9337. Accordingly, payments received by CBK for the sale or supply of electricity to NPC shall be subject to 0% VAT.**
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> x x x
>
> WHEREFORE, in view of the foregoing, **this Office holds that the billings of CBK, an entity engaged in hydropower generation, to NPC for the sale of electricity generated through hydropower are subject to VAT at zero percent (0%) under Section 108(B)(7) of R.A. 9337.** Accordingly, CBK need not apply for any prior approval or confirmation with the BIR as required under Section 4.108-6 of Revenue Regulations No. 16-2005. (Emphasis supplied)

This ruling is binding upon the CIR; it cannot be revoked or reversed unilaterally. The settled rule is that, under Section 246 of the Tax Code, the CIR "is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer."[46]

Further, CBK Power has demonstrated sufficiently its compliance with the mandatory invoicing requirements laid out in Section 113(A) and (B) of the Tax Code,[47] as further implemented by

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[46] *Commissioner of Internal Revenue v. Philippine Health Care Providers,* Inc., G.R. No. 168129, April 24, 2007, 550 PHIL 304-315.

[47] SEC. 113. Invoicing and Accounting Requirements for VAT-registered Persons. —

(A) Invoicing Requirements. — A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) Information Contained in the VAT Invoice or VAT Official Receipt. — The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

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Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-05, with respect to the issuance of invoices and receipts evidencing these sales.

To recall, CBK Power reported zero-rated sales in the aggregate amount of ₱2,986,030,302.05 in its Quarterly VAT Returns relative to the four quarters of CY 2018. CBK Power submitted the following documents in support thereof: (1) Schedule of Zero-Rated Sales,[48] (2) Power Bills,[49] and (3) Official Receipts and Acknowledgement Receipts[50] issued by petitioner to NPC for the subject period of claim.

These documents demonstrate that the reported sales/receipts amounting ₱2,986,030,302.05 had been derived by petitioner from its sales of electricity to NPC for CY 2018. The Official Receipts supporting these sales bear the information in accordance with the applicable invoicing requirements.

3) Timeliness of Administrative and Judicial Claims.

The present claim covers the first, second, third, and fourth quarters of CY 2018. Counting two years from the close of each of these quarters, respectively, the following table indicates the last day for filing of the administrative claim, *viz.*:

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale;

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

48 Exhibit "P-130".
49 Exhibits "P-130-1" to "P-130-223."
50 Exhibits "P-132-1" to "P-132-283."

Quarter	Close of the Quarter	Last Day to File Administrative Claim
First	March 31, 2018	March 31, 2020
Second	June 30, 2018	June 30, 2020
Third	September 30, 2018	September 30, 2020
Fourth	December 31, 2018	December 31, 2020

It is clear from the foregoing that CBK Power's **June 26, 2020**[51] filing of its **administrative claim** was within the two -year prescriptive period set out in Section 112(A) of the Tax Code with respect to the *second, third,* and *fourth* quarters of CY 2018.

Nevertheless, We still consider the administrative claim relative to the *first* quarter as timely filed, in view of the time extension provided in Revenue Regulations (RR) No. 16-2020[52] dated June 19, 2020. In particular, VAT refund claimants were given until **July 15, 2020** to file their claims with respect to calendar quarter ending March 31, 2018 (i.e., first quarter of CY 2018).

Subsequently, the CIR denied CBK Power's administrative claim; the latter received a copy of this denial on September 21, 2020.[53] It then proceeded to this Court and filed the present **judicial claim** on October 19, 2020. Likewise, the judicial claim was timely as it was filed within the 30-day reglementary period counted from receipt of the CIR's decision.

4) Validity of Unutilized Input VAT.

In the subject VAT returns, CBK Power declared input VAT from its *current period* domestic purchases and importations of goods and purchases of services in the aggregate amount of **₱45,961,730.84**. On the other hand, the present claim adverts to alleged refundable input VAT amounting to **₱47,237,298.60**, detailed as follows:[54]

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51 Exhibits "P-1" and "P-2."

52 SUBJECT: Regulations Further Suspending the Due Dates in the Application of the Ninety (90)-Day Period to Process Value Added Tax (VAT) Refund/Claim Pursuant to Section 112 of the Tax Code of 1997, as Amended by Republic Act (R.A.) No. 10963 (TRAIN Law) For Taxable Quarters Affected by the Declaration of the National State of Emergency.

53 Par. 3, Facts Admitted, JSFI, Docket - Vol. III, p. 1380.

54 Par. 16, *Petition for Review*, Docket - Vol. I, pp. 17 to 18.

I. INPUT TAXES ON GOODS OTHER THAN CAPITAL GOODS		
A Input Taxes on Domestic Purchases of Goods Other than Capital Goods		₱6,961,961.06
B. Input Taxes on Importation of Goods Other than Capital Goods (includes Importation of Capital Goods) per Quarterly VAT Returns	₱655,969.00	
Less:		
Input Taxes on Importation of Capital Goods Exceeding ₱1Million	414,518.00	
Input Taxes on Importation of Goods Other than Capital Goods		241,451.00
II INPUT TAXES ON SERVICES		
A. Input Taxes on Domestic Purchases of Services		34,427,908.66
B. Input Taxes on Services Rendered by Non-residents		1,101,219.18
III. INPUT TAXES ON CAPITAL GOODS		
A. Input Taxes on Purchases (Domestic Purchases and Importation) of Capital Goods Not Exceeding ₱1Million		79,070.36
B. Input Taxes on Domestic Purchases of Capital Goods Exceeding ₱1Million:		
Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	₱ 5,395,425.77	
Add: Input Taxes on Purchase of Capital Goods Exceeding P1Million	18,013,321.95	
Subtotal	₱23,408,747.72	
Less: Input Tax on Domestic Purchase of Capital Goods Exceeding ₱1Million Deferred to the Succeeding Period	20,289,943.72	
Allowable Input Taxes on Purchases of Capital Goods Exceeding ₱1Million		3,118,804.00
C. Input Taxes on Importation of Capital Goods Exceeding P1Million		
Input Taxes on Importation of Capital Goods Exceeding P1Million from the Previous Quarter	₱6,721,173.90	
Less: Input Tax on Importation of Capital Goods Exceeding ₱1Million Deferred for the Succeeding Period	5,163,050.70	1,558,123.20
TOTAL CREDITABLE INPUT TAXES PAID OR INCURRED FROM THE FIRST TO FOURTH QUARTERS OF CY 2018		**₱47,488,537.46**
Less: Output Tax Due		251,238.86
UNUTILIZED OR EXCESS CREDITABLE INPUT TAXES PAID OR INCURRED FROM THE FIRST TO FOURTH QUARTERS OF CY 2018		**₱47,237,298.60**

The input VAT subject of the claim must also be valid; that is, eligible for refund or credit in accordance with relevant Tax Code provisions and regulations. To be valid, the input VAT: (a) must not be transitional input taxes,[55] (b) must be due or paid[56] and substantiated by supporting documents that, in turn, meet the applicable VAT invoicing requirements,[57] (c) must be attributable to zero-rated or effectively zero-rated sales or supplies of service,[58] and (d) must not have been applied against output taxes during and in the succeeding quarters.[59] CBK Power's compliance with the above-enumerated requisites is discussed in detail below.

- *Not* transitional input VAT

There is no showing that input VAT credits subject of the instant claim are **transitional input VAT** within the meaning of Section 111(A) of the Tax Code. To be sure, the input VAT's non-transitional nature has not been put in issue nor questioned by the CIR.

- Actually due and paid; supported by VAT invoices and official receipts.

Only **91.90%**[60] of the total input VAT reported in the returns was established to have been **actually due or paid**.

Whether input VAT was due or paid is conditioned upon the presentation of documents that (a) substantiate the amount of input tax credits, as prescribed under Section 4.110-8 of RR No. 16-2005, and (b) comply with the invoicing requirements under Sections 113(A) and (B), 237 and 238 of the Tax Code, and implemented by Section 4.113-1(A) and (B) of RR No. 16-2005.

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55 Ibid.

56 Ibid.

57 *Team Energy Corporation v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

58 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra.

59 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

60 Valid input VAT ÷ Total claim = ₱43,643,461.80 ÷ ₱47,488,537.46 = 0.91903150 ≈ 91.90%

Input VAT incurred on domestic purchases of services during CY 2018 but not claimed as refund or credit.

A comparison of the input VAT on domestic purchases of services *claimed* as refund against that *declared* in the returns (Line 21J) reveals the following discrepancy:

	Exh.	Amount
First quarter	P-104	₱7,666,764.43
Second quarter	P-105	15,357,447.22
Third quarter	P-106	5,910,167.00
Fourth quarter	P-107	5,524,846.59
Total declaration per VAT returns		₱34,459,225.24
Claimed as refund or credit per judicial claim		34,427,908.66
Discrepancy		**₱31,316.58**

The input VAT incurred from domestic purchases of services declared in the VAT returns (₱34,459,225.24) is greater than that claimed in the present refund case (₱34,427,908.66). We recognize the exclusion of input VAT amounting to ₱31,316.58 as intentional on the part of CBK Power, amounting to a waiver of its right to claim the same. The present judicial claim shall be adjudicated only to the extent of the input VAT expressly prayed for (₱47,237,298.60).

Input VAT claimed but not declared in the returns.

We have observed that the present claim includes the amount of **₱1,558,123.20** pertaining to supposed input taxes on importation of capital goods exceeding ₱1 Million. **However, CBK Power did not report this amount in its VAT returns.**

A VAT taxpayer is mandated to report the **correct amount** of input taxes in the corresponding declaration/return as an integral part of its responsibility to determine the correct amount of VAT payable (*i.e.* output tax less input tax).[61]

[61] In computing the VAT payable or excess tax credits, "[t]here 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, subject to the limitations set forth in Section 4.110-7." See Section 4.110-6, Consolidated Value-Added Tax Regulations of 2005, Revenue Regulations No. 16-05, September 1, 2005, as amended by Revenue Regulations No. 04-07, February 7, 2007.

Under the Tax Code provisions governing VAT and its implementing rules, for every month or quarter it is required to file a declaration[62] or return,[63] the taxpayer shall work out the amount of input taxes creditable **by adding all creditable input taxes arising from domestic purchases or importations made *during the subject month or quarter*, as the case may be.**

Claimants bear the burden of proving the factual and legal basis of its claim for refund or credit.[64] Thus, for purposes of input tax refunds founded upon Section 112(A) of the Tax Code, the claimant must demonstrate, among others, *attributability* of the purchases that incurred input VAT to the "relevant sales" that were made.[65]

CBK Power's failure to declare the aforementioned amount of input VAT (i.e., ₱1,558,123.20) amounts to a failure to establish the requisite *attribution* of input taxes to the zero-rated sales upon which the claim for refund is based, as well as the fact that the input taxes were *due and paid.*

Input VAT claimed but not substantiated properly.

In her *Report*, the ICPA found input VAT amounting to **₱1,301,165.95** were supported by documents that did not conform with VAT invoicing requirements:

Exhibit	Description	Amount
"P-143-5"	Input tax on purchase of goods supported by a VAT Invoice or purchase of service supported by a VAT OR not dated within 2018	₱1,094,435.39
"P-143-7"	Input tax on purchase goods and services supported by a VAT Invoice (for goods) or a VAT OR (for services) not issued in the name of the Petitioner	7,077.62
"P-143-8"	Input tax on purchase of goods and services supported by a VAT Invoice (for goods) or a VAT OR (for services) but the VAT was not separately indicated	34,397.96

62 Section 4.114-1, Consolidated Value-Added Tax Regulations of 2005, Revenue Regulations No. 16-05, September 1, 2005.

63 Section 114, Tax Code; Section 4.114-1, Consolidated Value-Added Tax Regulations of 2005, Revenue Regulations No. 16-05, September 1, 2005, as amended by Revenue Regulations No. 04-07, February 7, 2007.

64 *Commissioner of International Revenue v. Filminera Resources Corporation*, G.R. No. 236325, September 16, 2020, citing *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007, 551 PHIL 519-567.

65 *Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue*, G.R. No. 250479, July 18, 2022.

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Exhibit	Description	Amount
"P-143-9"	Input tax on purchase of goods and services supported by a VAT Invoice (for goods) or a VAT OR (for services) issued in the Petitioner's name but without the Petitioner's TIN and/or address	85,862.57
"P-143-10"	Input tax on purchase of services supported by documents other than a VAT OR	33,536.98
"P-143-11"	Input tax on purchase of goods supported by VAT invoice. However, the sentence "This document is not valid for claiming input tax" is printed in the VAT invoice.	102.86
"P-143-12"	Input tax on purchase of goods supported by documents other than a VAT Invoice	6,596.08
"P-143-13"	Input tax on purchase of service supported by a VAT OR and purchase of goods supported by a VAT Invoice but not an original copy	29,941.45
"P-143-14"	Input tax on purchase of goods and services with unreadable supporting documents	1,206.72
"P-143-15"	Input tax on importations with unreadable supporting documents	3,109.00
"P-143-16"	Input tax on purchase of goods and services without supporting documents	4,256.46
"P-143-17"	Input tax on purchase of goods and services supported by invoices (for goods) or ORs (for services) with expired BIR Permit to Print	642.86
	Total	**₱1,301,165.95**

Upon *further verification*, We noted input VAT amounting to **₱985,786.51**, the supporting documents of which also do not comply with invoicing requirements, *viz.*:

Exhibit/Finding	Supplier Name	Amount
1. Purchases of services supported by OR but the nature of payment was not indicated thereon and/or the total input VAT reflected per the attached invoices/billing statements does not tally with that shown per OR.		
"P-127-1-421 to P-127-1-425"	Molina's General Builders	₱ 37,608.42 19,646.19 7,488.00 4,275.00
"P-127-1-375 to P-127-1-376"	Integrated Power and Control Provider Inc	93,868.87 89,357.14 357,428.57
2. Purchases of goods or services supported by SI or OR but date printed/written is incomplete or unclear.		
"P-127-9-115"	Puregold Price Club Inc	32.92
"P-127-10-80"	Novelyn Notario Corporation	38.57
"P-127-12-446" to "P-127-12-447"	Manila Electric Company	3,994.70

Exhibit/Finding	Supplier Name	Amount
3. *Purchases of goods or services supported by SI or tape receipt that is partly blurred or unreadable.*		
P-127-3-91	Philippine Seven Corporation	64.29
"P-127-4-298"	The Landmark Corp	503.29
P-127-5-2	Abacus Book and Card Corp	434.33
"P-127-5-228"	GEC CJS Food Corporation	44.46
"P-127-11-1"	Abacus Book and Card Corp	86.73
4. *Amortized input VAT on capital goods purchases exceeding* ₱1Million *supported by SI and/OR which were denied admission by the Court for failure to present the originals for comparison (Exhibit "P-144").*		370,915.03
	Total	**₱985,786.51**

Summary of Disallowed Input VAT

Based on the foregoing findings, input VAT in the aggregate amount of **₱3,845,075.66** shall be disallowed from the present claim. Resultantly, only input VAT amounting to **₱43,643,461.80** out of the ₱47,237,298.60 declared in the return shall be considered valid, *viz.*:

Input VAT subject of the present claim		₱47,488,537.46
Less: Disallowed input VAT		
Not declared in returns	₱1,558,123.20	
Not substantiated properly		
As per ICPA Report	1,301,165.95	
As per Court verification	985,786.51	3,845,075.66
Valid input taxes		**₱43,643,461.80**

- Attributable to zero-rated sales.

Only 99.9299% of the valid input VAT computed above is **attributable to zero-rated sales** and, thus, eligible for refund.

When the claimant was engaged in both VAT-able or zero-rated sales and input taxes due or paid cannot be attributed directly and entirely to either type of activity, it shall be allocated proportionately based on sales volume.[66]

66 Section 112(A), Tax Code.

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In the subject taxable quarters, CBK Power was engaged in both VATable and zero-rated sales. Furthermore, its input taxes were not shown to be attributable exclusively to either activity. Thus, the amount of ₱43,643,461.80 of valid input VAT computed above shall be apportioned between the two activities, *viz.*:

	VATable	**Zero-rated**	**Total**
Valid input VAT	₱43,643,461.80	₱43,643,461.80	
Multiply by percentage	0.0701%	99.9299%	
Apportionment	**₱30,579.20**	**₱43,612,882.60***	**₱43,643,461.80**

*Eligible for refund

Based on the foregoing, CBK Power's total valid input taxes **attributable to zero-rated sales** amounts to **₱43,612,882.60.** This amount is eligible for refund.

- Not applied against output tax during CY 2018.

For CY 2018, CBK reported total output VAT amounting to **₱251,238.86** computed as follows:

Quarter	Amount
First	₱80,452.07
Second	75,879.07
Third	45,619.07
Fourth	49,288.65
Total	**₱251,238.86**

On the other hand, the present claim (₱47,237,298.60) consists of input VAT incurred from the following transactions:

On goods other than capital goods	₱7,203,412.06
On services	35,529,127.84
On capital goods	4,755,997.56
Total creditable input VAT	₱47,488,537.46
Less Output VAT due	*- 251,238.86*
Total input VAT claimed for refund	**₱47,237,298.60**

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It is clear that CBK Power worked out the amount subject of its judicial claim by already deducting the output VAT due in CY 2018;[67] the total input VAT claimed for refund (₱47,237,298.60) is already *net* of the output tax reported *during* the subject periods.

Following CBK Power's computation, the output VAT due (₱251,238.86) shall be offset, first, against the input VAT attributable to VATable sales (₱30,579.20); the excess shall be deducted from the input VAT eligible for refund (₱43,612,882.60) as follows:

Output VAT due per returns		₱251,238.86
Less Input VAT attributable to VATable sales	-	30,579.20
Output VAT still due		₱220,659.66
Input VAT attributable to zero-rated sales		₱43,612,882.60
Less Output VAT still due	-	220,659.66
Input VAT available for refund		**₱43,392,222.94**

- Not applied against output tax in any subsequent period.

That the input VAT subject of the present claim was not utilized in any of the succeeding quarters is demonstrated by CBK Power's CY 2019 Fourth Quarter VAT Return.[68] The input VAT claim (₱47,237,298.60, which includes the refundable amount of ₱43,392,222.94) was shown as "VAT Refund/TCC Claimed;" a deduction from the total available input VAT in Line 23D of the return.[69]

In sum, while CBK Power ably demonstrated that the amount claimed had not been utilized previously or in subsequent quarters, We grant the claim only to the extent that it represents input taxes eligible for refund (*i.e.*, demonstrated to be actually due and paid, properly substantiated, and attributable to zero-rated sales). In which case, CBK Power shall be entitled to a refund of **₱43,392,222.94**.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND**

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67 Par. 26, *Petition for Review*, Docket - Vol. I, pp. 16-18.
68 Exhibit "P-116."
69 Exhibit "P-116-2-a."

OR ISSUE TAX CREDIT CERTIFICATE in favor of petitioner CBK Power Limited Company in the amount of ₱43,392,222.94. representing its unutilized input VAT attributable to its zero-rated sales for the first, second, third, and fourth quarters of CY 2018.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

HENRY S. ANGELES
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.

CATHERINE T. MANAHAN
Chairperson
Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Third Division 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.

ROMAN G. DEL ROSARIO
Presiding Justice