REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

RESTORED ENERGY DEVELOPMENT CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 9958 & 9975

Members:

DEL ROSARIO, *P.J., Chairperson*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
NOV 18 2022 ; 2:40 P.M.

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DECISION

MANAHAN, *J.:*

These are consolidated *Petitions for Review* filed by petitioner Restored Energy Development Corporation (REDC) against respondent Commissioner of Internal Revenue (CIR), praying for the refund or issuance of tax credit certificates (TCCs) in the aggregate amount of ₱1,444,011.42, representing input value-added taxes (VAT) attributable to zero-rated sales for the 2nd, 3rd and 4th quarters of taxable year (TY) 2016.[1]

THE PARTIES

Petitioner REDC has principal office at 770 E. Rodriguez Extension, Malibay, Pasay City,[2] and is a VAT-registered entity with Tax Identification Number (TIN) 006-930-473-000.[3]

Petitioner is also registered with the Board of Investments (BOI) as a Renewable Energy Developer of Biomass Energy Resources, under Certificate of Registration No. 2015-068.[4] It

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[1] Docket, CTA Case No. 9958, Vol. II, Statement of the Case, Pre-Trial Order dated August 14, 2019, p. 848.
[2] *Id.*, Vol. II, Par. A.1, Admitted Facts, *Joint Stipulations of Facts and Issues* (JSFI), p. 791.
[3] *Id.*, Vol. II, Exhibit "P-3", p. 987.
[4] Docket, CTA Case No. 9958, Vol. II, Exhibits "P-4", "P-5", and "P-6", pp. 988 to 994.

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is likewise registered with the Department of Energy (DOE), under Certificate of Registration No. RE-B2013-09-074a, as an RE Developer of 11.2 Thermal Biomass Steam Production Facility located in Brgy. Tunasan, Muntinlupa City, covered by Biomass Renewable Energy Operating Contract No. 2013-09-039.[5]

On the other hand, respondent CIR is the duly appointed head of the Bureau of Internal Revenue (BIR) vested by law in general to implement and enforce the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and other tax laws, and in particular, decide claims for refund of internal revenue tax.[6]

THE FACTS

Petitioner filed with the BIR its administrative claims for refund of the alleged input VAT paid on its purchases of goods and services which are directly attributable to petitioner's zero-rated sales for the 2nd, 3rd, and 4th quarters of TY 2016.[7] The administrative claims for refund, together with supporting documents thereto, were filed on the following dates:

Quarterly VAT Return for 2016	Date of Filing of Claim for Refund
2nd Quarter	July 2, 2018[8]
3rd Quarter	July 23, 2018[9]
4th Quarter	July 23, 2018[10]

On September 24, 2018, petitioner received from the BIR, through Revenue District Officer (RDO) Honorata S. Aguilar, a copy of an undated letter denying petitioner's claim for refund for the period from July 1, 2016 to September 30, 2016 or for the 3rd quarter of TY 2016.[11]

On October 24, 2018, petitioner filed a *Petition for Review*[12] under CTA Case No. 9958, praying that judgment be

[5] *Id.*, Vol. II, Exhibits "P-7" and "P-8", pp. 995 to 1018.
[6] *Id.*, Vol. II, Par. A.2, Admitted Facts, JSFI, p. 791.
[7] *Id.*, Vol. II, Par. A.4, Admitted Facts, JSFI, p. 792.
[8] *Id.*, Vol. II, Exhibits "P-25" to "P-25-3", pp. 1209 to 1213.
[9] *Id.*, Vol. II, Exhibits "P-26" to "P-26-3", pp. 1214 to 1218.
[10] *Id.*, Vol. II, Exhibits "P-27", and "P-27-2" to "P-27-3", pp. 1219, and 1221 to 1223, respectively.
[11] *Id.*, Vol. II, Exhibit "P-28", p. 1224.
[12] Docket, CTA Case No. 9958, Vol. I, pp. 10 to 30.

rendered ordering respondent to refund, or issue TCCs to petitioner in the aggregate amount of ₱971,554.03, allegedly representing input VAT attributable to petitioner's VAT zero-rated sales for the 2nd and 3rd quarters of TY 2016.

Respondent posted his *Answer* on January 21, 2019,[13] interposing the following special and affirmative defenses, to wit:

1. The instant Petition for Review states no cause of action. It is an elementary rule that taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.

2. The claims for refund are still subject to investigation by the Bureau of Internal Revenue (BIR).

3. Petitioner's claim for refund or issuance of tax credit certificate in the total amount of Nine Hundred Seventy One Thousand Five Hundred Fifty Six and 100/03 (Php 971,556.03), representing the alleged excess and unutilized input VAT for the said quarters of TY 2016, were not fully substantiated by proper documents, such as sales invoices and official receipts, in accordance with the mandates of Sections 113 and 237 of the NIRC, as amended by Republic Act (RA) No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law, and in relation to Revenue Memorandum Circular No. 17-2018.

4. Petitioner must show that it has completely complied with the provisions of Section 15(g) of RA No. 9513 or the Renewable Energy Act and Sections 106(A)(2)(a)(1), 108(B)(2), 110(B), 112(A) & (C) of the 1997 Tax Code, as amended by the TRAIN Law. Failure to prove the same is fatal to its claim for refund.

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[13] *Id.*, Vol. II, pp. 696 to 702.

5. The application for tax refund/credit certificate for the input VAT paid on purchases of goods and services for the Second Quarter of TY 2016 appears to have been filed out of time.

6. The instant Petition should be dismissed as regards petitioner's claim for tax refund/credit certificate for the input VAT paid on purchases of goods and services for the Second Quarter of TY 2016 for being prematurely filed.

Respondent transmitted to this Court the *BIR Records* of the case on February 1, 2019.[14]

On February 4, 2019, petitioner filed a *Reply.*[15]

The Pre-Trial Conference was scheduled on March 28, 2019.[16]

Meanwhile, on November 20, 2018, petitioner filed another *Petition for Review*[17] under CTA Case No. 9975, praying that judgment be rendered ordering respondent to refund, or issue a TCC to petitioner in the aggregate amount of ₱472,457.39, allegedly representing its input VAT attributable to its zero-rated sales for the 4th quarter of TY 2016.

Respondent filed her *Answer with Motion to Dismiss* on January 18, 2019,[18] interposing his special and affirmative defenses that the Court lacks jurisdiction over the *Petition for Review*, and that assuming without admitting that this Court has jurisdiction, the same must be dismissed for lack of merit.

Subsequently, on February 4, 2019, petitioner likewise filed a *Reply.*[19]

The Pre-Trial Conference was initially set on March 28, 2019.[20]

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[14] Docket, CTA Case No. 9958, Vol. II, Respondent's *Transmittal Letter* dated February 1, 2019, pp. 705 to 707.
[15] *Id.*, Vol. II, pp. 710 to 723.
[16] *Id.*, Vol. II, *Notice of Pre-trial Conference* dated February 4, 2019, pp. 724 to 725.
[17] Docket, CTA Case No. 9975, pp. 10 to 24.
[18] *Id.*, pp. 357 to 365.
[19] Docket, CTA Case No. 9975, pp. 368 to 380.

The *BIR Records* of the case were transmitted by respondent on February 14, 2019.[21]

On February 7, 2019, petitioner filed a *Motion to Consolidate,* praying for the consolidation of CTA Case No. 9975, with CTA Case No. 9958.[22]

In the Resolution dated February 20, 2019,[23] the Court granted petitioner's *Motion to Consolidate.* In the same Resolution, the Court decreed that the Pre-Trial Conference set on March 28, 2019 shall proceed as consolidated cases. However, the said Conference was later reset to June 6, 2019,[24] upon respondent's *Motion To Reset Pre-Trial Conference* filed on March 21, 2019.[25]

The Pre-Trial Conference proceeded as scheduled.[26] Prior thereto, petitioner filed its *Pre-Trial Brief* on April 3, 2019,[27] while *Respondent's Pre-Trial Brief* was submitted on May 30, 2019.[28]

On June 21, 2019, the parties submitted their *Joint Stipulation of Facts and Issues.*[29] Subsequently, the Pre-Trial Order dated August 14, 2019 was issued,[30] deeming the termination of the Pre-Trial.

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Alexis S. Mendoza,[31] petitioner's Tax Specialist; and (2) Mr. Floyd C. Paguio,[32] the

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[20] Docket, CTA Case No. 9975, *Notice of Pre-Trial Conference* dated February 12, 2019, pp. 392 to 393.
[21] *Id.*, Respondent's *Letter* dated February 14, 2019, pp. 384.
[22] Docket, CTA Case No. 9958, Vol. II, pp. 726 to 729.
[23] *Id.*, Vol. II, p. 731.
[24] *Id.*, Vol. II, Order dated March 26, 2019, p. 744.
[25] *Id.*, Vol. II, pp. 740 to 743.
[26] *Id.*, Vol. II, Minutes of the hearing held on, and Order dated, June 6, 2019, Docket, pp. 783 to 785, and 786 to 787, respectively.
[27] *Id.*, Vol. II, pp. 746 to 753.
[28] *Id.*, Vol. II, pp. 767 to 772.
[29] *Id.*, Vol. II, pp. 791 to 797.
[30] *Id.*, Vol. II, pp. 848 to 859.
[31] *Id.*, Vol. II, Exhibit "P-38", pp. 754 to 765; Minutes of the hearing held on, and Order dated, September 17, 2019, pp. 874 to 876.
[32] *Id.*, Vol. II, Exhibit "P-40", pp. 877 to 890; Docket, CTA Case No. 9958, Vol. II, Order dated October 1, 2019, pp. 900 to 901. am

Court-commissioned Independent Certified Public Accountant (ICPA).[33]

The *Report* of the said ICPA was submitted to the Court on September 16, 2019.[34]

Petitioner filed its *Formal Offer of Evidence* on October 23, 2019.[35] Subsequently, respondent posted her *Comment/Objection (To Petitioner's Formal Offer of Evidence)* on November 4, 2019.[36]

In the Resolution dated February 4, 2020,[37] the Court noted that petitioner's exhibit markings are not compliant with the CTA *En Banc* Resolution No. 08-2013[38], and thus, ordered, *inter alia,* the ICPA to submit the exhibits with proper markings, in accordance therewith, and the amended ICPA Report. Petitioner was likewise ordered to submit an amended Formal Offer of Evidence.

Thus, on February 26, 2020, the ICPA submitted its amended Report;[39] and petitioner filed its *Amended Formal Offer of Evidence.*[40] Respondent, however, failed to file her comment/opposition to the said *Amended Formal Offer of Evidence.*[41]

Thus, in the Resolution dated October 6, 2020,[42] the Court admitted petitioner's exhibits, *except* for Exhibit "P-27-1", for failure to present the original thereof for comparison.

For her part, respondent likewise presented her testimonial and documentary evidence. She offered the testimony of Revenue Officer Ma. Rhodora P. Cantilang.[43]

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[33] Docket, CTA Case No. 9958, Vol. II, *Oath of Commission* dated August 15, 2019, p. 863; Minutes of the hearing held on, and Order dated, August 15, 2019, pp. 860 to 862, and 864 to 865, respectively.
[34] Exhibit "P-39", Docket, CTA Case No. 9958, Vol. II, pp. 866 to 872.
[35] *Id.*, Vol. II, pp. 902 to 974.
[36] *Id.*, Vol. II, pp. 1239 to 1245.
[37] *Id.*, Vol. II, pp. 1250 to 1251.
[38] The issuance wherein this Court adopted *"a different mode of marking documentary evidence".*
[39] Docket, CTA Case No. 9958, Vol. III, pp. 1253 to 1259.
[40] *Id.*, Vol. III, pp. 1261 to 1337.
[41] *Id.*, Vol. III, Records Verification dated September 8, 2020, p. 1347.
[42] *Id.*, Vol. III, pp. 1349 to 1353.
[43] *Id.*, Vol. II, Exhibit "R-3", pp. 773 to 781; Docket, CTA Case No. 9958, Vol. III, Order dated January 26, 2021.

Respondent's Formal Offer of Evidence was posted on February 1, 2021.[44] Petitioner then filed its *Comment* on February 15, 2021.[45] In the Resolution dated May 20, 2021,[46] the Court admitted respondent's exhibits, *except* for Exhibits "R-2" and "R-2-1", for not being found in the records.

Respondent's *Memorandum* was posted on July 7, 2021,[47] while petitioner's *Memorandum* was posted on July 12, 2021.[48]

Subsequently, on July 27, 2021, petitioner posted a *Motion for Leave of Court to File and Admit Attached Reply Memorandum.*[49] In the Resolution dated October 27, 2021,[50] the Court granted the said Motion and admitted petitioner's *Reply-Memorandum,*[51] and submitted for decision these consolidated cases.

ISSUE

As stipulated by the parties, the sole issue submitted for this Court's resolution is as follows:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE INPUT VAT PAID IN RELATION TO ITS VAT ZERO-RATED SALES FOR THE SECOND, THIRD, AND FOURTH QUARTER OF 2016 IN THE AGGREGATE AMOUNT OF PHP1,443,011.42"[52]

Petitioner's Arguments[53]

Petitioner primarily argues that it is entitled to the refund of the unutilized input VAT it incurred in relation to its VAT zero-rated sales of renewable energy for the 2nd, 3rd and 4th quarters of TY 2016. It contends that it is a VAT-registered person; that petitioner is engaged in VAT zero-rated sales; that the input taxes have not been applied against output taxes

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[44] Docket, CTA Case No. 9958, Vol. III, pp. 1357 to 1359.
[45] *Id.*, Vol. III, pp. 1373 to 1375.
[46] *Id.*, Vol. III, pp. 1379 to 1380.
[47] *Id.*, Vol. III, pp. 1461 to 1479.
[48] *Id.*, Vol. III, pp. 1421 to 1459.
[49] *Id.*, Vol. III, pp. 1482 to 1506.
[50] *Id.*, Vol. III, p. 1509.
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[52] Docket, CTA Case No. 9958, Vol. II, Par. B, Issues to be Resolved, JSFI, p. 792.
[53] *Supra.*, Note 48.

during and in the succeeding taxable quarters; and that the claim is filed within two (2) years after the close of the taxable quarter when such sales are made.

Respondent's Arguments[54]

Respondent contends that to be entitled to a refund, petitioner must comply with all the requisites required by law; that the tax refund/claim for the 2nd quarter of TY 2016 should be denied for being filed out of time; that compliance with the period provided under Section 112(A) of the NIRC, as amended, is mandatory; that the *Petitions for Review* filed for tax refund/credit certificate for the 2nd, 3rd, and 4th quarters of TY 2016 were prematurely filed; that the option of the taxpayer to file an appeal based on the deemed denial of the BIR has been omitted from Section 112(C) by RA No. 10963, otherwise known as the *Tax Reform for Acceleration and Inclusion* (TRAIN Law); that the *Petition for Review* filed for tax refund/credit certificate for the 3rd quarter of TY 2016 was also prematurely filed; that petitioner's claim for refund should be denied for not being fully substantiated by proper documents and for failure to comply with the requirements of law; and that petitioner's big-ticket purchases were not properly substantiated.

RULING OF THE COURT

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

Section 112 of the 1997 NIRC, as amended by RA No. 10963,[55] provides, in part, 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

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[54] *Supra.*, Note 47.

[55] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
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> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Based on the foregoing provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites may be classified into the following categories:

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

1. the refund claim is filed with the BIR within two

(2) years after the close of the taxable quarter when the sales were made;[56]

2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;

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

3. the taxpayer is a VAT-registered person;[57]

<u>In relation to the taxpayer's output VAT</u>:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[58]

5. for zero-rated sales under Section 108(B)(7), the sale of power or the sale of fuel is generated or produced from renewable sources of energy;

<u>As regards the taxpayer's input VAT being refunded</u>:

6. the input taxes are not transitional input taxes;[59]

7. the input taxes are due or paid;[60]

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

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[56] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, 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.*, G.R. No. 182364, August 3, 2010.

[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] *Ibid.*

[59] *Ibid.*

[60] *Ibid.*

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;[61] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[62]

It must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[63] Thus, it behooves petitioner to show compliance with each of the foregoing requisites. Any absence of *any* one of the said requisites constitutes a valid ground to deny the refund claim.

Petitioner's administrative and judicial claims for refund/credit were timely filed.

The *first* requisite pertains to the filing of a claim for tax refund or tax credit of 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.

Respondent, however, asserts that the claim for refund for the 2nd quarter of TY 2016 was filed out of time as the administrative claim was only filed on July 2, 2018 or two (2) days after the deadline.

The Court disagrees with respondent.

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

[62] *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.*

[63] *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.

As already stated, the present claim covers the 2nd, 3rd and 4th quarters of TY 2016. Counting two (2) years from the close of the said quarters, the respective last days for the filing of the administrative claim for the said three (3) quarters as well as the dates of filing of the claim by petitioner, pursuant to Section 112(A) of the 1997 NIRC, as amended, are shown below, *viz.*:

CTA Case No.	Taxable Quarter	Reckoning of the 2-year period	Last day for filing an Administrative Claim	Date of Filing of Claim for Refund
9958	2nd Quarter (April 1 to June 30, 2016)	June 30, 2016	June 30, 2018	July 2, 2018[64]
9958	3rd Quarter (July 1 to September 30, 2016)	September 30, 2016	September 30, 2018	July 23, 2018[65]
9975	4thQuarter (October 1 to December 31, 2016)	December 31, 2016	December 31, 2018	July 23, 2018[66]

On the filing of the administrative claim for the 2nd quarter of taxable year 2016, while it may be true that it is only on July 2, 2018 that the said claim was filed with the BIR, the same is of no moment. This is so because Section 28 (Chapter 7, Book I) of the Executive Order No. 292, series of 1987, otherwise known as the *Administrative Code of 1987*, reads as follows:

> "Section 28. *Pretermission of Holiday.* – Where the day, or the last day, for doing any act required or permitted by law falls on a regular holiday or special day, the act may be done on the next succeeding business day."

Indisputably, June 30, 2018 fell on a Saturday. Such being the case and on the basis of the foregoing provision, petitioner's filing of the administrative claim for the 2nd quarter of TY 2016 on July 2, 2018 (Monday), the next succeeding business day, is considered timely filed.

For the 3rd and 4th quarters of TY 2016, considering that the last days of the two-year prescriptive period are on

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64 Docket, CTA Case No. 9958, Vol. II, Exhibits "P-25" to "P-25-3", pp. 1209 to 1213.
65 *Id.*, Vol. II, Exhibits "P-26" to "P-26-3", pp. 1214 to 1218.
66 *Id.*, Vol. II, Exhibits "P-27", and "P-27-2" to "P-27-3", pp. 1219, and 1221 to 1223, respectively.

September 30, 2018 and December 31, 2018, respectively, the filing of the administrative claims on July 23, 2018 for the said quarters are also well within the prescriptive period.

As for the *second* requisite, the same necessitates that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision **or** after the expiration of the 90-day period under Section 112(C) of the 1997 NIRC, as amended. Thus, from the filing of petitioner's administrative claims, respondent had ninety (90) days to act on the said claim.

Relative thereto, respondent contends that the *Petitions for Review* filed for tax refund/credit certificate for the 2nd, 3rd and 4th quarters of TY 2016 were prematurely filed.

Anent the administrative claim of petitioner for the 3rd quarter of TY 2016, respondent points out that the Letter of Denial reveals that the same was only prepared and signed by RDO Honorata S. Aguilar; and that it is the Regional Director which has the authority to deny or grant an administrative claim for refund/credit that is filed within his/her jurisdiction.

On this score, this Court agrees with respondent.

Section 7 of the 1997 NIRC, as amended, provides as follows:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* – **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:
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> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Section 204(A) and (B) of this Code, any tax liability: xxx; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis added)*

Based on the foregoing provision, respondent is authorized to delegate certain powers vested in him under the 1997 NIRC, as amended, which necessarily includes the power to grant or deny administrative claims for refund under Section 112 of the said law.

Relative thereto, Revenue Memorandum Circular No. 17-2018 dated February 27, 2018, which was issued by respondent, reads, in part, as follows:

"I. Claims for value-added tax (VAT) refund

A. General Policies

xxx xxx xxx

5. Any findings in the course of the verification/review of the VAT claims that may lead to a deficiency in internal revenue taxes, other than VAT, shall be communicated by the processing/reviewing office to the concerned investigating office having jurisdiction over the taxpayer-claimant. However, if the findings involve VAT, these may result to disallowance or denial of the claim, or if the case warrants, for possible assessment of VAT liability.

   Should the claim be for denial, such fact should be communicated in writing to the taxpayer within the 90-day period. **The denial letter shall be signed by the Commissioner (CIR)/Deputy Commissioner – Operations Group (DCIR – OG)/Assistant Commissioner (ACIR)/Regional Director, as the case may be**." *(Emphasis added)*

On the basis thereof, it is clear that an RDO is **not** one of those BIR officers authorized by respondent to issue or sign a letter denying a refund claim. Thus, the undated letter signed by RDO Honorata S. Aguilar, denying petitioner's claim for refund for the 3rd quarter of TY 2016[67], cannot be treated as respondent's decision, which may be the subject of an appeal before this Court.

[67] Docket, CTA Case No. 9958, Vol. II, Exhibit "P-28", p. 1224.

In any event, as will be shown momentarily, petitioner's *Petition for Review,* covering the 3rd quarter of TY 2016 (CTA Case No. 9958), may still be considered as timely filed before this Court.

Respondent further avers that by virtue of the amendment introduced by the TRAIN Law on Section 112(C), the only remedy available for petitioner after the lapse of the 90-day period, is to wait first for the action or decision of the BIR to its claim for tax refund/credit certificate before filing a *Petition for Review*; that an appeal to this Court may ripen after the taxpayer's receipt of the BIR's decision denying the claim for VAT refund; that the receipt of the decision is a necessary requirement before judicial relief may be availed of by petitioner; and that in this case, petitioner has yet to receive the decision of the BIR denying its administrative claim for tax refund.

The Court, however, finds respondent's reasoning as specious.

Undoubtedly, RA No. 10963 or the TRAIN Law, which took effect on January 1, 2018,[68] has amended, *inter alia*, Section 112(C) of the 1997 NIRC, as last amended by RA No. 9337. For easy reference, a comparison of the amended version and the provision prior to the amendment under RA No. 10963 or the said TRAIN Law is shown below, *viz.*:

Section 112(C) of the 1997 NIRC, as amended by RA No. 9337	***Amendment under RA No. 10963 or the TRAIN Law***
"SEC. 112. *Refunds or Tax Credits of Input Tax.* – xxxx (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)	"SEC. 112. *Refunds or Tax Credits of Input Tax.* – xxxx (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund for creditable input taxes **<u>within ninety (90) days</u> from the date of submission of the official receipts or invoices and other documents in support of the application** filed in accordance with Subsections (A)

[68] Section 87, RA No. 10963.

hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."	and (B) hereof: *Provided*, **That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial**. **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the decision with the Court of Tax Appeals**: *Provided, however,* **That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code**." *(Emphases and underscoring added)*

As can be gleaned from the foregoing comparison, the same reveals, *inter alia*, that the period of action on the part of respondent has been reduced to ninety (90) days by RA No. 10963 or the TRAIN Law; and that the phrase "*or the failure on the part of the Commissioner to act on the application within the period prescribed above*" has been deleted by the same law.

At first glance, it may appear that with the said deletion, the legislature intends for the refund-claimant to wait for respondent or the BIR to act on the administrative claim or render a decision thereon, denying the same, before such refund-claimant may file an appeal before this Court. However, such an interpretation would be to disregard provisions of other relevant law, governing such appeal, and would not be in keeping with the established harmonized rules of interpretation.

It is axiomatic in statutory construction that a statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. The rule is expressed in the maxim, "*interpretare et concordare legibus est optimus interpretandi*", or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[69]

Needless to state, the appeal to this Court relative to the full or partial denial of an administrative claim for refund or issuance of a tax credit certificate for input VAT is not only governed by the aforequoted Section 112(C) of the 1997 NIRC, as amended, but also by Section 7(a)(1) and (2) of RA No. 1125[70], as amended by RA No. 9282[71], which provides as follows:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides <u>a specific period of action</u>, in which case <u>the inaction shall be deemed a denial</u>**;" *(Emphases added)*

Interpreting the foregoing provision, the Supreme Court, in *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*,[72] held as follows, to wit:

> "The charter of the CTA expressly provides that its jurisdiction is to review on appeal '**decisions** of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes.' When a taxpayer

[69] *Philippine Economic Zone Authority vs. Green Asia Construction & Development Corporation*, G.R. No. 188866, October 19, 2011.
[70] AN ACT CREATING THE COURT OF TAX APPEALS.
[71] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
[72] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

> prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no 'decision' of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within '**a specific period**' required by law, such '**inaction shall be deemed a denial**' of the application for tax refund or credit. It is the Commissioner's decision, or inaction 'deemed a denial,' that the taxpayer can take to the CTA for review. Without a decision or an 'inaction x x x deemed a denial' of the Commissioner, the CTA has no jurisdiction over a petition for review." *(Underscoring added)*

Simply stated, Section 7(a)(1) and (2) of RA No. 1125, as amended by RA No. 9282, clearly provides for this Court's jurisdiction over refunds such that the CTA has exclusive appellate jurisdiction (a) to review respondent's decisions, and (b) to review respondent's inaction "*where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial*[.]." To be sure, the charter of this Court expressly provides that if respondent fails to decide within a "*specific period*" required by law, such "*inaction shall be deemed a denial*" of the application for tax refund or credit.[73] In other words, under this Court's Charter, respondent's inaction on a claim for refund is considered a "*denial*" of the claim, which may be appealed before this Court within thirty (30) days from the expiration of the period fixed by law for action.[74]

It must be emphasized that RA No. 10963 or the said TRAIN Law has still provided "*a specific period of action*", albeit in the reduced period of ninety (90) days, on the part of respondent. Thus, despite the deletion of the phrase "*or the failure on the part of the Commissioner to act on the application within the period prescribed above*" found under the former Section 112(C), it cannot be denied that the aforequoted Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, should still be applied.

One of the well-established rules of statutory construction enjoins that endeavor should be made to harmonize the provisions of a law or of two laws so that each

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[73] *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*, G.R. No. 205055, July 18, 2014.

[74] Refer to *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.

shall be effective.[75] Such being the case, both Section 112(C) of the 1997 NIRC, as amended by RA No. 10963 or the TRAIN Law **and** Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, should be <u>both</u> given effect.

Correspondingly, it was erroneous for respondent to limit his interpretation solely on Section 112(C) of the 1997 NIRC, as amended by RA No. 10963 or the TRAIN Law.

Moreover, repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject, the congruent application of which the courts must generally presume. For this reason, it has been held that the failure to add a specific repealing clause particularly mentioning the statute to be repealed indicates that the intent was not to repeal any existing law on the matter, unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and old laws.[76] Thus, in enacting RA No. 10963 or the TRAIN Law, the legislature is presumed to know the existence of Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282. Such being the case, had Congress intended to further amend or to repeal the said Section 7(a)(2), it could have easily done the same, by adding or mentioning it, in the repealing clause or Section 86 of the RA No. 10963 or the TRAIN Law. Notably, Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, is not one of the provisions mentioned in the said Section 86. In addition, as already intimated, no irreconcilable inconsistency and repugnancy exist between Section 112(C) of the 1997 NIRC, as amended by RA No. 10963, and Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282.

Clearly, contrary to respondent's stance, it is not the intent of the legislature for the refund-claimant to wait for respondent to act on the administrative claim or to render a decision thereon, denying the same, before such refund-claimant may file an appeal before this Court. To be sure, such as in these consolidated cases, when respondent fails to act within the 90-day period decreed by Section 112(C) of the 1997 NIRC, as amended by RA No. 10963 or the TRAIN Law, such inaction should already be deemed a denial of the administrative claim, in accordance with Section 7(a)(2) of RA

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[75] *Valera vs. Tuason, Jr., et al.*, G.R. No. L-1276, April 30, 1948.
[76] *Philippine International Trading Corporation vs. Commissioner of Audit,* G.R. No. 183517, June 22, 2010.

No. 1125, as amended by RA No. 9282, and the refund-claimant must already appeal the said denial, within thirty (30) days from the expiration of the said 90-day period; otherwise, this Court shall not acquire jurisdiction.

In the present consolidated cases, the last days to file a judicial claim in view of the inaction of respondent and the dates of actual filing by petitioner, respectively, are shown below:

Taxable Quarter	Date of Filing of Administrative Claim	Expiration of the 90-day Period	Last day for filing Judicial Claim	Date of Filing of *Petition for Review*
2nd Quarter (April 1 to June 30, 2016)	July 2, 2018[77]	September 30, 2018	**October 30, 2018**	**October 24, 2018[78]**
3rd Quarter (July 1 to September 30, 2016)	July 23, 2018[79]	October 21, 2018	**November 20, 2018**	**October 24, 2018[80]**
4th Quarter (October 1 to December 31, 2016)	July 23, 2018[81]	October 21, 2018	**November 20, 2018**	**November 20, 2018[82]**

Given the above dates, the respective last days to file the judicial claims for the refund of the input VAT for the said three quarters of taxable year 2016 were all made within the 30-day reglementary period, pursuant to Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, in relation to Section 112(C) of the 1997 NIRC, as amended by RA No. 10963.

Hence, petitioner clearly complied with the *first* and *second* requisites to successfully obtain a credit/refund of input VAT.

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[77] Docket, CTA Case No. 9958, Vol. II, Exhibits "P-25" to "P-25-3", pp. 1209 to 1213.
[78] *Id.*, Vol. I, pp. 10 to 30.
[79] *Id.*, Vol. II, Exhibits "P-26" to "P-26-3", pp. 1214 to 1218.
[80] *Id.*, Vol. I, pp. 10 to 30.
[81] *Id.*, Vol. II, Exhibits "P-27", and "P-27-2" to "P-27-3", pp. 1219, and 1221 to 1223, respectively.
[82] Docket, CTA Case No. 9975, pp. 10 to 24.

Petitioner 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, with Tax Identification Number 006-930-473-000.[83]

Petitioner is engaged in zero-rated sales or effectively zero-rated sales during the subject quarters.

The *fourth* requisite requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales through the sale of power or the sale of fuel generated or produced from renewable sources of energy.

Petitioner claims that its sale of steam power generated from renewable biomass energy to Pepsi-Cola Products Philippines, Inc. (PCPPI) for the 2nd, 3rd, and 4th quarter of TY 2016 are VAT zero-rated.

Section 15(g) of RA No. 9513[84] (otherwise known as the "*Renewable Energy Act of 2008*") reads as follows:

> "CHAPTER VII
> GENERAL INCENTIVES
>
> SEC. 15. *Incentives for Renewable Energy Projects and Activities.* – **RE developers of renewable energy facilities**, including hybrid systems, in proportion to and to the extent of the RE component, **for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives**:
>
> xxx xxx xxx
>
> (g) Zero Percent Value-Added Tax Rate. – **The sale of fuel or power generated from renewable sources of energy** such as, but not limited to, **biomass**, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and

[83] Docket, CTA Case No. 9958, Vol. II, Exhibit "P-3", pp. 987.
[84] AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES.

> 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.**
>
> 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." *(Emphases added)*

Based on the foregoing provision, it is clear, *inter alia*, that the sale of fuel or power generated from renewable sources of energy, such as biomass, etc., is subject to the zero percent (0%) VAT rate, pursuant to Section 108(B)(7) of the NIRC of 1997, as amended by RA No. 9337; that such incentive pertains to RE developers of renewable energy facilities, as duly certified by Department of Energy (DOE), in consultation with the Board of Investments (BOI).

Relative thereto, Sections 25 and 26 of RA No. 9513 provides as follows:

> "SEC. 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 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 **to serve as the basis of their entitlement to incentives** provided under Chapter VII of this Act.
>
> SEC. 26. *Certificate 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 Renewable Energy Management Bureau.**
>
> The Department of Energy, 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 <u>without prejudice</u> to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned.**" *(Emphases and underscoring added)*

To implement the foregoing provisions, Section 18 (under Part III, Rule 5) of DOE Circular No. DC2009-05-0008, otherwise known as the *Implementing Rules and Regulations (IRR) of RA No. 9513*, provides as follows:

> "SECTION 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.
>
> *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, RE Developers, 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*

RE Developers, 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.**

xxx xxx xxx." *(Emphasis added)*

On the basis of the foregoing provisions, to avail of the incentive of VAT zero-rating on the sale of fuel or power generated from renewable sources of energy, including biomass, all certifications must be obtained by the concerned RE Developer from the DOE, through its Renewable Energy Management Bureau. However, it is likewise clear that the issuance of the certification issued by the DOE in favor of any RE developer is still "*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.*"

In any event, as can be gleaned from Section 15(g) of RA No. 9513, the VAT zero-rating being granted to RE developer is with reference to the 1997 NIRC, as amended, by RA No. 9337.

Specifically, the provision being referred to is Section 108(B)(7) thereof, which reads as follows, to wit:

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

To implement the foregoing provision, Sections 4.108-3(f) and 4.108-5(b)(7) of RR No. 16-2005[85] provide as follows:

> "SEC. 4.108-3. *Definitions and Specifics Rules on Selected Services.* –
>
> xxx xxx xxx
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10%[86] 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 <u>authorized by the Energy Regulatory Commission (ERC)</u> to operate facilities used in the generation of electricity. For this purpose, <u>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)</u>.** They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.
>
> xxx xxx xxx."

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[85] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

[86] 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. *(initials)*

> SEC. 4.108-5. <u>*Zero-Rated Sale of Services*</u>. -
>
> xxx xxx xxx
>
> (b) *Transactions Subject to Zero Percent (0%) VAT Rate.* - The following services performed in the Philippines by a VAT -registered person shall be subject to zero percent (0%) VAT 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 and **steam**, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; ***Provided*, however, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy**, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power. *(Emphases and underscoring added)*

Notably, there are two (2) kinds of RE Developer under Section 15 of RA No. 9513, namely, those involved in power generation (*i.e.*, electricity) and non-power applications (*i.e.*, heat) which are entitled to the named incentives therein.

Sections 4(hh) and 4(nn) of RA No. 9513 define what are those classified as non-power and power applications, respectively, to wit:

> "Section 4. Definition of Terms. – As used in this Act, the following terms are herein defined:
>
> xxx xxx xxx
>
> (hh) "**Non-power applications**" refer to **renewable energy systems or facilities that produce** mechanical energy, combustible products such as methane gas, or forms of useful thermal energy such as heat or **steam, that are not used for electricity generation, but for applications such as, but not limited to, industrial/commercial cooling, and fuel for cooking and transport**;
>
> xxx xxx xxx
>
> (nn) "Power applications" refer to renewable energy systems or facilities that produce electricity;" (*Emphasis supplied*)

Such classification, in relation to Section 108(B)(7) of the 1997 NIRC, as amended, was properly explained in the case of

Energy Development Corporation v. Commissioner of Internal Revenue,[87] to wit:

> "From the above provisions, it is clear that the 1) sale of power generated through renewable sources of energy; and the 2) sale of fuel generated through renewable sources of energy are subject to zero percent (0%) VAT rate provided that such zero-rating shall not extend to the sale of services related to the maintenance or operation of plants generating said power.
>
> The Webster New Collegiate Dictionary defines "power" as a source or means of supplying energy, especially: ELECTRICITY *(5.a., p. 902 thereof)* and the time rate at which work is done or energy is emitted or transferred *(6.c., p. 902 thereof)*. On the other hand, "fuel" is defined as a) a material used to produce heat or power by burning, b) a nutritive material; and c) a material upon which atomic energy can be liberated especially in a reactor *[Webster New Collegiate Dictionary (1977], p. 463)*. The sale of "power" therefore may refer to the sale of electricity itself, while the sale of "fuel" may refer to the material used to produce such power.
>
> The fact that the sale of power or electricity and the sale of fuel are two distinct items in this provision was clarified during the deliberation as shown in Conference Committee Report on SN 1950/ HN 3555 & 3705 (Amending the NIRC for Value Added Tax) dated May 10, 2005, pertinent portion of which reads, as follows:
>
>> "Senator Osmeña. Thank you for that clarification.
>>
>> Now, Section 7, line 7, the provision reads: 'SALE OF POWER OR FUEL-GENERATED THROUGH RENEWABLE SOURCES OF ENERGY SUCH AS, BUT NOT LIMITED TO, ... and we go on. What about the importation of power or fuel-generated?
>>
>> Senator Recto. As I understand it, it is zero-rated, Mr. President.
>>
>> Senator Osmeña. There may be something in the future ... In other words, everything has to originate locally - the source of energy must be domestic. I am just anticipating because the word 'biomass' appears here. Baka may mag-import ng 'biomass'. Kasama po ba iyon?
>>
>> Senator Recto. Well, if they import it, the way I read it, they are subject to VAT. But it is zero-rated and they can get their refund.
>>
>> Senator Osmeña. So, it will be a VAT zero-rated?
>>
>> Senator Recto. That is right.
>>
>> xxx xxx."

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[87] CTA Case No. 7792, June 11, 2012.

The criteria required in order that the sale of power or the sale of fuel will be subject to zero percent (0%) VAT is that said power or fuel is generated or produced from renewable sources of energy. *Section 4 (mm) of RA 9136* defines "Renewable Energy Resources" as energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis and the renewable rate is rapid enough to consider availability over an indefinite time. These include, among others, biomass, solar, wind, hydro and ocean energy. In addition to the above enumeration by example, *RA 9337* also mentioned geothermal and other emerging energy sources using technologies, such as fuel cells and hydrogen fuels, as renewable sources of energy.

Unlike in RA 9136, which subjects to zero percent VAT the sales of generated power by generation companies, to wit:

> "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." (*Section 6, 5th paragraph thereof*).

RA 9337, which repealed the above *Section 6, 5th paragraph of RA 9136*, subjects to zero percent (0%) VAT the sale of power or fuel generated through renewable sources of energy, without qualifying that said zero rating must pertain only to the sale of power by generation companies or to the sale of power or electricity. Instead, RA 9337 subjects to zero percent rate (0%) all sales of power, or all sales of fuel, as long as said power/electricity and fuel are generated or produced from renewable sources of energy. Thus, in *RA 9337*, the seller of power/electricity or the seller of fuel must not only be limited to generation companies, unlike in *RA 9136.*

In fact, *RA 9513*, an "Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes" provides that **the provision subjecting to zero percent VAT rate the sale of fuel or power generated from renewable sources of energy pursuant to the *NIRC of 1997*, *as amended by RA 9337*, 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 *(Section 15 (g), Chapter VII thereof).*" (*Emphasis supplied*)

Under Section 15 of RA No. 9513, for these RE Developer in non-power applications to be entitled to said incentives, they are required only to be certified by the Department of Energy (DOE), in consultation with the Board of Investments

(BOI). Thus, the COC, as required by ERC, is not applicable to the RE Developer's generating renewable energy in non-power application.

In the instant consolidated cases, the zero-rated sales to PCPPI were pursuant to a Steam Supply Agreement[88] where petitioner shall supply PCPPI with steam to be used for its bottle washing operation.

It appears then that the sale of a generated steam through renewable sources of energy is one of a non-power application since it was not used for electricity but for industrial/commercial purposes.

Petitioner, in order to support its allegation that it is qualified for VAT zero-rated sales, presented also the following documents, to wit:

a) DOE Certificate of Registration No. RE-B2013-09-074a dated June 14, 2016,[89] stating that petitioner is registered as *"an RE Developer of* ***11.2MW Thermal Biomass Steam Production Facility*** *located in* ***Brgy. Tunasa, Muntinlupa City****"*;

b) BOI Certificate of Registration No. 2015-068 dated March 23, 2015,[90] stating petitioner's type of registration/activity as *"RENEWABLE ENERGY DEVELOPER OF BIOMASS ENERGY RESOURCES"*;

c) DOE Certificate of Endorsement dated April 11, 2016 to BOI;[91] and

d) DOE Certificate of Endorsement dated April 11, 2016 to BIR.[92]

Thus, petitioner had proven that it complied with all the requisites of an RE Developer in non-power application and is

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[88] Docket, CTA Case No. 9958, Vol. II, Exhibit "P-11", pp. 1021-1029.
[89] *Id.*, Vol. II, Exhibit "P-7", p. 995.
[90] *Id.*, Vol. II, Exhibits "P-4" to "P-6", pp. 988 to 994.
[91] Docket, CTA Case No. 9958, Vol. II, Exhibit "P-9", p. 1019.
[92] *Id.*, Vol. II, Exhibit "P-10", p. 1020.

therefor entitled to VAT zero-rate on its sale under Section 108(B)(7) of the 1997 NIRC, as amended.

Corollary to the fourth and fifth requisites, it is equally important that the VAT zero-rated sales referred to under Section 108(B)(7) of the NIRC of 1997, as amended, upon which petitioner's claim is anchored, must be duly supported by VAT zero-rated official receipts in accordance with Section 113(A)(2), (B)(1), (2)(c) and (3) of the same Code, which provides that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties, and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the information stated in the said provision, to wit:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) Invoicing Requirements. — A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (2) A <u>VAT official receipt</u> 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:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term '<u>**zero-rated sale**</u>' shall be written or printed prominently on the invoice or receipt;
>
> xxx xxx xxx
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx" (*Boldfacing and Underscoring supplied*)

Relatively, Section 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-2005, as amended, which implements the foregoing, states:

> "SEC. 4.113-1. *Invoicing Requirements.* —

(A) A VAT-registered person shall issue: —

xxx xxx xxx

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

Only VAT-registered persons are required to print their TIN followed by the word `VAT' in their invoice or official receipts. Said documents shall be considered as a `VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his 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 VAT; Provided, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term `zero-rated sale' shall be written or printed prominently on the invoice or receipt;" (*Underscoring supplied*)

In the instant case, petitioner failed to present or offer as evidence the VAT zero-rated official receipts to substantiate its alleged zero-rated sale of steam power generated from renewable biomass energy. The submission of Summary Schedules for its Zero-Rated VAT Sales for the 2nd, 3rd and 4th quarters of TY 2016[93] and the corresponding Sales Invoices (SIs)[94] is not sufficient to support the same. Simply put, petitioner's sales are sales of services falling under the provision of Section 108(B)(7) of the NIRC of 1997, as amended and as such, should properly be supported by official receipts.

Considering that the alleged VAT zero-rated sales of steam generated through renewable biomass energy under Section 108(B)(7) of the NIRC of 1997, as amended, were not

[93] ICPA Report Exhibits "P-2.7" to "P-2.9".
[94] ICPA Report Exhibits "P-3.7.1" to "P-3.7.16", "P-3.8.1" to "P-3.8.15" and "P-3.9.1" to "P-3.9.13".

duly substantiated, the fourth and fifth requisites were not satisfactorily complied with.

As such, petitioner's refund claims must necessarily fail. Correspondingly, it is no longer necessary to determine whether petitioner complied with the remaining requisites to merit favorable consideration of its claims for refund/issuance of tax credit certificate on the unutilized input taxes for TY 2016.

Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[95] The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[96] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[97] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[98]

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

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(See Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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[95] *Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue*, G.R. No. 154028, July 27, 2005.

[96] *National Power Corporation vs Province of Isabela*, G.R. No. 165827, June 16, 2006 citing *Cyanamid Philippines, Inc. vs Court of Appeals*, 379 Phil. 689, 703 (2000).

[97] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011 *citing Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

[98] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015 *citing J.R.A. Philippines, Inc. v. CIR*, G.R. No. 171307, August 28, 2013.

Marian Ivy F Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

RESTORED ENERGY DEVELOPMENT CORPORATION, Petitioner,	**CTA CASE NOS. 9958 & 9975**
	Members:
- versus -	**DEL ROSARIO**, *P.J.*, *Chairperson* **MANAHAN**, and **REYES-FAJARDO**, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 18 2022 2:40 P.M.

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SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* in denying the Petitions for Review for petitioner's failure to submit the value-added tax (VAT) official receipts of its zero-rated sale of services, which is fatal to petitioner's refund claim.

I wish to express, however, the position I have taken in *Trans-Asia Renewable Energy Corporation vs. Commissioner of Internal Revenue, et seq.*,[1] that renewable energy (RE) developers, like petitioner herein, are not required to submit a Certificate of Compliance (COC) issued by the Energy Regulatory Commission (ERC), notwithstanding that such RE developer is engaged in either "power" or "non-power" applications, in order to be entitled to refund pursuant to Section 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 15(g) of the RE Act of 2008.[2]

The *ponencia* ruled that since petitioner is engaged in the sale of steam used for the bottle washing operation of its client, Pepsi-Cola

[1] CTA EB Nos. 2314 & 2347 (CTA Case No. 9516), May 17, 2022.
[2] Republic Act No. 9513.

Products Philippines, Inc., under a Steam Supply Agreement, which falls under the category of "non-power application" pursuant to Section 4(hh) of the RE Act of 2008, petitioner is not required to secure a COC issued by the ERC.

It is my view, however, that such distinction is immaterial considering that a refund claimant of excess and unutilized input VAT under Section 108(B)(7) of the NIRC of 1997, as amended, in relation to Section 15(g) of the RE Act of 2008, need not comply with the provisions of the Electric Power Industry Reform Act (EPIRA).[3]

In *Team Energy Corporation (formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, et seq.*[4] ("*Team Energy*"), the Supreme Court differentiated between claims for refund under EPIRA and those under the NIRC of 1997, as amended, with respect to the requirement of securing a COC issued by the ERC, to wit:

> "**Indeed, the requirements of the EPIRA law would apply to claims for refund filed under the EPIRA**. In such case, the taxpayer must prove that it has been duly authorized by the ERC to operate a generation facility and that it derives its sales from power generation. This was the thrust of this Court's ruling in *Commissioner of Internal Revenue v. Toledo Power Company* (TPC).
>
> In *Toledo*, the Court of Tax Appeals granted Toledo Power Company's (TPC) claim for refund of unutilized input VAT attributable to sales of electricity to NPC, but denied refund of input VAT related to sales of electricity to other entities for failure of TPC to prove that it was a generation company under the EPIRA. This Court held that TPC's failure to submit its ERC Certificate of Compliance renders its sales of generated power not qualified for VAT zero-rating. This Court, in affirming the Court of Tax Appeals, held:
>
>> Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4 (x) of the same law states that a generation company "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Corollarily, **to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation**.
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>> . . . .

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[3] Republic Act No. 9136.
[4] G.R. Nos. 197663 & 197770, March 14, 2018.

> In this case, when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 2002, it did not automatically become a generation company. It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA.
>
> **Here, considering that Team Energy's refund claim is premised on Section 108(B)(3) of the 1997 NIRC, in relation to NPC's charter, the requirements under the EPIRA are inapplicable**. To qualify its electricity sale to NPC as zero-rated, Team Energy needs only to show that it is a VAT-registered entity and that it has complied with the invoicing requirements under Section 108(B)(3) of the 1997 NIRC, in conjunction with Section 4.108-1 of Revenue Regulations No. 7-95." (*Boldfacing supplied*)

Applying the Supreme Court's pronouncement in *Team Energy*, a refund claimant need not submit a COC issued by the ERC if the claim is premised on Section 108(B)(7) of the NIRC of 1997, as amended, in relation to Section 15(g) of the RE Act of 2008. Parenthetically, whether the refund claimant is engaged in either "power" or "non-power" application under the RE Act of 2008, a COC issued by the ERC would still not be required considering that the refund claim is not based on EPIRA.

As discussed, there is no distinction made by the Supreme Court in *Team Energy* that differentiates whether a refund claimant is engaged in "power" or "non-power" applications.

To be entitled to refund under Section 108(B)(7) of the NIRC of 1997, as amended, petitioner need only to submit the documentary requirements listed in Section 18 of the Rules and Regulations Implementing Republic Act No. 9513 (IRR), which petitioner complied with when it offered in evidence the following:

(1) Department of Energy (DOE) Certificate of Registration No. RE-B2013-09-074a dated June 14, 2016;[5]

(2) Board of Investments (BOI) Certificate of Registration No. 2015-068 dated March 23, 2015;[6]

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[5] Docket, Vol. II, p. 995.
[6] *Id.*, p. 988.

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(3) DOE Letter dated April 11, 2016 re: Certificate of Endorsement to BOI;[7] and,

(4) DOE Letter dated April 11, 2016 re: Certificate of Endorsement to Bureau of Internal Revenue.[8]

Notwithstanding that petitioner complied with the requirements under the RE Act of 2008 and its IRR, which requirements do not include a COC issued by the ERC, petitioner's refund claim should nevertheless be denied for petitioner's failure to present the VAT official receipts on its zero-rated sales of service[9] as required under Section 113 of the NIRC of 1997, as amended. As held by the Supreme Court in *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*:[10]

> "Irrefutably, **when a VAT-taxpayer claims to have zero-rated sales of services, it must substantiate the same through valid VAT official receipts, not any other document, not even a sales invoice** which properly pertains to a sale of goods or properties." (*Boldfacing supplied*)

ALL TOLD, I *CONCUR* in denying the Petitions for Review for petitioner's failure to offer in evidence the VAT official receipts of its zero-rated sales of service.

ROMAN G. DEL ROSARIO
Presiding Justice

[7] *Id.*, p. 1019.
[8] *Id.*, p. 1020.
[9] Section 108(B)(7) of the NIRC of 1997, as amended, pertains to "sale of services and use or lease of properties."
[10] G.R. No. 191495, July 23, 2018.