REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEDCOR SIBULAN, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* No. 1641
(CTA Case No. 8166)

x- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

HEDCOR SIBULAN, INC.,
Respondent.

CTA *EB* No. 1643
(CTA Case No. 8166)

Present:

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

Promulgated:

MAR 1 1 2019 1:45 p.m.

x- x

RESOLUTION

MANAHAN, J.:

This resolves the *Motion for Reconsideration (Re: Decision dated September 19, 2018)*[1] filed by Hedcor Sibulan, Inc. (Hedcor).[2] Upon notice,[3] the Commissioner of Internal Revenue

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[1] *Rollo*, pp. 180-195.
[2] Filed through registered mail on October 22, 2018 and received by the Court on November 8, 2018.
[3] *Rollo*, Resolution dated November 22, 2018, pp. 198-199.

(CIR) filed his *Comment Re: Petitioner's Motion for Reconsideration*[4] on December 13, 2018.

Hedcor seeks reconsideration of the Court *En Banc's* Decision,[5] dated September 19, 2018, which disposed of the case, as follows:

> **WHEREFORE**, the Petition for Review filed by Hedcor Sibulan, Inc., docketed as CTA EB No. 1641 is **DISMISSED** for lack of merit. On the other hand, the Commissioner of Internal Revenue's Petition for Review, docketed as CTA EB No. 1643 is **GRANTED**. The Decision and Resolution in CTA Case No. 8166, dated December 21, 2016 and April 12, 2017 are **REVERSED** and **SET ASIDE**. Accordingly, Hedcor Sibulan, Inc.'s claim for refund or tax credit is denied.[6]

In its motion, Hedcor states that the Certificate of Compliance (COC) issued by the Energy Regulatory Commission (ERC) is a procedural requirement under Republic Act No. (RA) 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), and the Rules and Regulations to Implement Republic Act No. 9136, Entitled "EPIRA" (the "IRR"), before Hedcor may start commercial operations, and merely confirms the status of Hedcor as a Generation Company. Hedcor further states that the COC is a mere certification and gives proof of Hedcor's status as a Generation Company. Hedcor did not become a Generation Company by virtue of the issuance of the COC since it was a generation company even prior to the actual issuance of the COC. Finally, Hedcor states that the assailed Decision will cause irreparable economic injury to petitioner and the power generation industry.

In his Comment, the CIR states that Hedcor cannot be considered a generation company during the period of the claim. The CIR argues that a generation company must, before it operates, secure from the ERC a COC as well as various clearances from appropriate government agencies, to be entitled to zero-percent (0%) VAT. Here, Hedcor obtained its COCs on August 9, 2010 for Plant A and on May 24, 2010 for Plant B. thus, the 1st quarter of 2010 clearly came before the issuance of the COCs.

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[4] *Rollo*, pp. 200-204.
[5] *Rollo*, pp. 163-175.
[6] *Rollo*, p. 174.

The motion lacks merit.

It is reiterated that the dates of the issuance of the COCs are relevant in determining whether Hedcor has zero-rated sales for the 1st quarter of 2010. In the instant case, the claimed zero-rated sales occurred on the 1st quarter of 2010. However, the COCs were only issued on May 24, 2010 and August 9, 2010, which are clearly after the 1st quarter of 2010.

In *Commissioner of Internal Revenue v. Toledo Power Company,*[7] the Supreme Court disallowed the subject claim for refund for failure to present the COC. The Supreme Court also ruled that *Toledo*'s sales for 2002 did not qualify as zero-rated sales since *Toledo* was only able to secure a COC on June 23, 2005. *Toledo*'s pending application for a COC was likewise not considered by the Supreme Court since the mere application for COC did not automatically entitle *Toledo* to the rights of a generation company under the EPIRA.

As to Hedcor's invocation of "irreparable economic injury" to itself and the power generation industry in general, this Court *En Banc*'s discussion in *CE Cebu Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*[8] is in point. We quote:

> The petitioner, as a final point, argues that the requirement of COC is "not consistent with the economic objectives" of the EPIRA and "is injurious not only to the petitioner but also to the power generation industry in general." Specifically, petitioner took the opportunity to remind the Court, *lest We overlook*, that the power industry "not only contributes to the betterment of the lives of the Filipino people but could also be instrumental to the continued growth of the Philippine economy."
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> First, policy considerations are certainly helpful in framing issues on the correct interpretation of the EPIRA. Precisely for this reason that the petitioner should also be reminded that legislative power, exercised through the enactment of the EPIRA, must promote the common good. Under this general welfare clause, therefore, the Court must construe the EPIRA comprehensively, that is, from the *broad* perspective of *not just the power industry* and the consumers of

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[7] G.R. No. 196415, December 2, 2015.
[8] CTA EB No. 741, Resolution dated March 27, 2018.

electricity *but also* the other sectors of society and the country as a whole.

Second, to conclude that the requirement of the COC is not consistent with the policies embodied in EPIRA is a leap that requires more than general statements *unsupported by hard data*. Exactly how the requirement of the COC is injurious to the power industry, for example in terms of the scale and magnitude, is unclear to the Court since the petitioner failed to provide any support for such claim. The claim is, thus, long on rhetoric but short on details. Without empirical basis, petitioner's statement is merely an opinion which the Court, as a trier of facts, cannot consider.

Third, even if assuming We accept as true petitioner's statement on the negative impact of the requirement of the COC, perhaps the proper recourse is through corrective legislation. What this Court is empowered to exercise is judicial power. Simply put, the duty of this Court is to apply the law, anchored on the interpretation promulgated by the Supreme Court.

Finally, to align with the declared policies of the EPIRA, petitioner invokes the liberality emphasized in *San Roque Power Corporation v. Commissioner of Internal Revenue*. In *San Roque*, which was a claim for refund of excess and unutilized input VAT attributable to zero-rated sales of electricity and from purchases of capital goods, the Supreme Court granted the refund claim under Section 112 in relation to Section 108(B)(3) of the NIRC and *not* under the EPIRA. As the court noted, the "main dispute in this case is whether or not petitioner's claim complied with the sixth requirement – the existence of zero-rated or effectively zero-rated sales, to which creditable input tax may be attributed." In short, the refund was granted not through the liberal application of the EPIRA, which was an *obiter dictum*, but because the taxpayer was able to hurdle the documentary requirements under Section 112 of the NIRC. (*italics in the original*)

Based on the foregoing, the Court finds no compelling reason to modify nor reverse the findings of the assailed Decision dated September 19, 2018.

WHEREFORE, the instant *Motion for Reconsideration (Re: Decision dated September 19, 2018)* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice