REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

CBK POWER COMPANY LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8246 & 8302

Members:
BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:
MAY 04 2018
11:25 a.m.

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RESOLUTION

BAUTISTA, J.:

This resolves respondent's Motion for Partial Reconsideration (Re: Amended Decision dated 02 February 2018) ("Motion for Partial Reconsideration") filed on February 22, 2018, without petitioner's comment despite notice.

On June 10, 2014, the Court rendered a Decision[3] ("2014 Decision") wherein the Court partly granted the Petition for Review, and ordered respondent to issue a tax credit certificate ("TCC") in favor of petitioner in the reduced amount of Php22,126,419.93, representing unutilized input value-added tax ("VAT") incurred in relation to its zero-rated sales of electricity to the National Power Corporation ("NPC") for the first (1st) and second (2nd) quarters of 2009. In the 2014 Decision, the Court has made an exhaustive and detailed discussion on petitioner's compliance with the requisites under *Section 112(A) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC").*

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[3] *Records, CTA Case No. 8246, Vol. 3, Decision,* pp. 1816-1840.

On February 2, 2018, the Court promulgated an Amended Decision[4], the dispositive portion of which states:[5]

> **WHEREFORE,** premises considered, the Decision and the Resolution dated June 10, 2014 and September 8, 2014, respectively, are hereby **AFFIRMED with MODIFICATION.** Respondent is hereby **ORDERED to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SIXTEEN MILLION FOUR HUNDRED THREE THOUSAND ONE HUNDRED NINETY AND 69/100 PESOS (PHP16,403,190.69)** representing unutilized input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the first quarter of CY 2009.
>
> **SO ORDERED.**

The Court stated as follows:

> Respondent, despite being given an opportunity by the Supreme Court to present evidence, opted not to do so. Therefore, after a review after a review of the Original Decision, the Court finds no reason to reverse its findings and to reiterate petitioner's compliance with the first (1st), second (2nd), fifth (5th), and sixth (6th) requisites. However, since petitioner withdrew its judicial claim for the second quarter of CY 2009, there is a need to determine compliance with the third (3rd) and fourth (4th) requirements, and for <u>a re-computation of the amount of the TCC to which petitioner is entitled (if any), with respect to the first quarter.</u>[7]

It is clear therefore, there being no new issue or arguments raised, the Court just proceeded to compute the amount of TCC corresponding to the first (1st) quarter of 2009.

In his Motion for Partial Reconsideration, respondent alleges that petitioner is not entitled to the issuance of TCC in the aggregate amount of Php17,784,968.91 allegedly representing unutilized and input VAT for the period January 1, 2009 to March 31, 2009. Citing *Section 15(g) of Republic Act ("RA") No. 9513* otherwise known as the Renewable Energy Act of 2008, respondent alleges that petitioner, as

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[4] *Records, CTA Case Nos. 8246 & 8302,* pp. 1923-1936.
[5] *Id.* at 1907-1922.
[7] Underscoring ours.

a special purpose entity, whose sole purpose is to engage in all aspects of design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of Kalayaan II pumped-storage hydroelectric power plant, is considered a renewable energy ("RE") developer, and is therefore entitled to zero-rated VAT on its purchases of local supply of goods, properties, and services needed for the development, construction and installation of its plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power. According to respondent, since there was no input VAT to be paid by RE Developers, it necessary follows that petitioner is not entitled to refund or issuance of TCC from its purchases; and that it is petitioner's suppliers who are the proper parties to claim the tax credit and accordingly refund the petitioner of the VAT erroneously passed on to the latter.

Respondent cites the case of *CBK Power Company Limited v. CIR*[8], wherein the Third Division of the Court of Tax Appeals held that petitioner is not entitled to refund or TCC because it is an RE Developer, and as an RE Developer, petitioner is not liable to pay any input VAT.

Lastly, respondent asseverates that the Court has failed to discuss the determination of the compliance of the refund claim with the fourth requirement on whether the input VAT allegedly paid by petitioner are attributable to zero-rated sales or effectively zero-rated sales. Respondent goes on to say that the determination on whether the input VAT paid are attributable to the petitioner's zero-rated sales or effectively zero-rated sales is indispensable. According to respondent, to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production; that after determining which input taxes are creditable, the law requires a second evaluation to determine which creditable input taxes are attributable; this means that the connection between the purchases and the finished product is concrete and not imaginary or remote; and that there is nothing in the decision of the honorable court that would show that the purchases or input tax are attributable to the finished product whose sale is zero-rated.

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[8] CTA Case No. 7887, June 6, 2017.

On April 4, 2018, the Motion for Partial Reconsideration was submitted for resolution.

The Court will now resolve.

Anent respondent's claim that petitioner is an RE Developer and thus, it is covered by *RA No. 9513, Sections 25* and *26 of RA No. 9513* provides that in order to enjoy the incentives provided under *Section 15(g) of RA No. 9513,* it must be duly registered as an RE Developer with the Department of Energy. *Sections 25* and *26 of RA No. 9513* reads as follows, to wit:

> Section 25. ***Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment.*** - RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the Department of Energy, through the Renewable Energy Management Bureau. Upon registration, a certification shall be issued to each RE Developer and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act.
>
> **Section 26.** ***Certification from the Department of Energy.*** - All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy Management Bureau.
>
> The 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 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.

Petitioner presented as evidence the Certificate of Compliance issued by the Energy Regulatory Commission[9]. On the other hand,

[9] *Records, CTA Case Nos. 8246 & 8302, Vol. 2, Exhibits "F" to "I,"* pp. 1429-1432.

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respondent claims that petitioner is an RE Developer without providing any proof that will support his claim despite having the chance to do so. Respondent could have presented evidence that petitioner is indeed registered as an RE Developer with the Department of Energy, through the Renewable Energy Management Bureau. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence.[10] Thus, for failing to provide proof that petitioner is covered by RA No. 9513, respondent's contention must fail.

Respondent's reliance on the Court's Decision in CTA Case No. 7887 dated June 6, 2017 is misplaced. Respondent may have missed the fact that said Decision was superseded by an Amended Decision promulgated on October 10, 2017, wherein the Court reversed its earlier ruling and granted the Petition for Review therein, and ordered respondent to issue a TCC in favor of petitioner.

There is likewise no merit on respondent's claim that there is nothing in the Amended Decision that discussed the determination of the compliance of the refund claim with the fourth requirement as to whether the input VAT a alleged input VAT paid by petitioner are attributable to zero-rated or effectively zero-rated sales.

It must be emphasized that the Amended Decision was brought about by respondent's insistence that he be allowed to present evidence to refute petitioner's claims. However, when given an opportunity to present his evidence, respondent's counsel manifested that "he had no evidence to present there being no report of investigation submitted to him by the assigned Revenue Officer."[11]

The 2014 Decision exhaustively discussed compliance with the requisites provided under *Section 112(A) of the 1997 NIRC.* There was nothing for the Court to deliberate as there was no evidence presented before it that would sway the findings of the Court in the 2014 Decision.

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[10] *Dr. Castor C. De Jesus v. Rafael D. Guerrero III, Cesario R. PAgdilao, and Fortunata B. Aquino,* G.R. No. 171491, September 4, 2009, 598 SCRA 341.
[11] *Records, CTA Case Nos. 8246 & 8302, Vol. 4, Minutes of Hearing dated July 3, 2017,* p. 1853.

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However, due to petitioner's withdrawal[12] of its Petition for Review in CTA Case No. 8302[13], which covers petitioner's application for tax refund or TCC for the months April 1, 2009 to June 30, 2009 (second quarter), the Court had to compute the amount for TCC anew since the 2014 Decision covered both the claims for refund/TCC for the first and second quarters of 2009.

At this point, the Court would like to quote the 2014 Decision wherein it already discussed compliance with the fourth and fifth requirements, *viz.:*

> And for the fourth and fifth requisites - *that the input taxes are attributable to zero-rated or effectively zero-rated and the same -were not applied against any output tax* - the Court finds that petitioner's reported sales for the first (1st) and second (2nd) quarters of 2009 were all zero-rated, thus, the substantiated input VAT in the amount of [Php]22,126,419.93 is entirely attributable thereto and was not applied against any output tax. In addition, in its reported unutilized input taxes for the first (1st) and second (2nd) quarters of 2009 in the respective amounts of [Php]17,784,968.91,50 and [Php]231,680,290.87,51 the same were deducted as "VAT Refund/TCC claimed" in the said Quarterly VAT Returns for the same taxable quarters preventing the carry-over or application of such input taxes in the next taxable quarter/s.

Contrary to respondent's allegation, the Court has made an exhaustive discussion that the input VAT paid or incurred are attributable to zero-rated or effectively zero-rated sales. In fact, the Amended Decision discussed in detail the pieces of evidence that support petitioner's claim.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Amended Decision dated February 2, 2018 is hereby **AFFIRMED** and **UPHELD.**

SO ORDERED.

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[12] *Records, CTA Case Nos. 8246 & 8302, Vol. 4, Resolution* dated February 15, 2017, pp. 1848-1851.
[13] *Id., CTA Case No. 8302, Resolution* dated October 14, 2011 consolidating CTA Case No. 8302 with CTA Case No. 8246, pp. 81-82.

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LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S. ...
MA. BELEN M. RINGPIS-LIBAN
Associate Justice