REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MAIBARARA GEOTHERMAL, INC., *Petitioner,*	**CTA *EB* NO. 2111** *(CTA Case Nos. 9119, 9201, 9254 & 9336)*
-versus-	Present: **DEL ROSARIO, P.J.,** **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 0 2 2021 4:25pm

x -- x

<u>RESOLUTION</u>

MODESTO-SAN PEDRO, J.

For the Court's resolution is petitioner's **Motion for Reconsideration (Decision Dated November 26, 2020)**, filed through registered mail on 21 December 2020 and received by this Court on 6 January 2021,[1] without respondent's Comment, as per Records Verification Report dated 3 March 2021.[2]

On 26 November 2020, this Court promulgated a Decision[3] in the instant case, denying petitioner's claim for refund of its unutilized input value-added tax ("VAT") allegedly attributable to its zero-rated sales for taxable year 2013. The denial was based on petitioner's failure to establish the existence of zero-rated sales and petitioner's failure to sufficiently prove

---

1 Records, pp. 109-128.
2 Records, p. 132.
3 Decision dated 26 November 2020, Records, pp. 83-100.

compliance with ***Republic Act ("R.A.") No. 9513***[4] and its ***Implementing Rules and Regulations ("IRR")***[5] for purposes of establishing that it is engaged in zero-rated sales. The dispositive portion of the Decision reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review filed by Maibarara Geothermal, Inc. is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated 4 March 2019 and Resolution dated 9 July 2019, both rendered by the Court in Division, are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

In its Motion for Reconsideration, petitioner prays that the above Decision be reconsidered and an amended decision be rendered granting its claim for refund upon the following grounds:

(1) The Honorable Court erred in ruling that petitioner failed to establish that it is engaged in zero-rated sales; and

(2) The Honorable Court erred in ruling that petitioner failed to prove the existence of zero-rated sales upon which the 2013 input VAT may be attributed.[6]

Anent the first ground, petitioner insists that a Department of Energy ("DOE") Certificate of Endorsement is not required for the sales of a Renewable Energy ("RE") Developer to qualify for VAT zero-rating. Petitioner explains that nowhere in ***Section 15(g) of R.A. No. 9513***, the provision which governs VAT zero-rating for sale of fuel or power generated from RE sources, is it required for an RE Developer to present a DOE Certificate of Endorsement before it may be qualified to avail of the VAT fiscal incentive. Petitioner adds that ***Sections 15(g) and 25 of R.A. No. 9513*** only require that a taxpayer be certified or registered as an RE Developer of the DOE. According to petitioner, the DOE Certificate of Endorsement is only required when an RE developer seeks to avail of the tax incentives under ***Section 15(b) R.A. No. 9513*** or the provision pertaining to duty-free importation of RE machinery, equipment, and materials and the sale, transfer, or disposition of imported capital equipment, machinery, or spare parts. Thus, petitioner contends that the additional requirement provided in ***Section 18 of the IRR*** of securing a DOE Certificate of Endorsement to avail of all incentives under ***R.A. No. 9513*** including VAT zero-rating under ***Section 15(g) of R.A. No. 9513***, not only the incentive under ***Section 15(b)*** of the same law, unconstitutionally expanded what the law requires.

---

[4] An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and For Other Purposes (otherwise known as the "Renewable Energy Act of 2008").

[5] Department of Energy Circular No. DC2009-05-0008.

[6] Records, p. 110.

Nevertheless, petitioner claims that even assuming that it cannot be considered as an RE Developer under the provisions of ***R.A. No. 9513***, its sale of power generated from renewable sources of energy is subject to VAT zero-rating pursuant to ***Section 108(B)(7) of the National Internal Revenue Code of 1997, as amended ("NIRC").***

At the outset, it should be noted that between the ***NIRC***, which is a general law governing the imposition of national internal revenue taxes, fees, and charges,[7] on one hand, and ***R.A. No. 9513***, which is a special law providing fiscal and nonfiscal incentives to encourage the development, utilization, and commercial application of renewable energy resources,[8] on the other, the latter prevails. Settled is the rule in statutory construction that where there are two statutes on the same subject matter, one general and the other special, the special law must prevail over the general since it evinces the legislative intent more clearly than the general statute does.[9] A special law prevails over a general law regardless of the laws' respective dates of passage.[10]

Petitioner cites ***Commissioner of Internal Revenue v. CBK Power Company Limited ("CBK Case")***[11] in justifying its claim that even assuming that it has failed to comply with the requisites for VAT zero-rating under ***R.A. No. 9513*** and its ***IRR***, its sales still qualify for VAT zero-rating under ***Section 108(B)(7) of the NIRC***. We disagree. Respondent in the said case is a generation company duly certified by the Energy Regulatory Commission under ***R.A. No. 9136 or the Electric Power Industry Reform Act*** and not under ***R.A. No. 9513***. Unlike petitioner in the instant case, which claimed to be an RE Developer pursuant to ***R.A. No. 9513***,[12] respondent in the ***CBK Case*** never claimed to be an RE Developer pursuant to ***R.A. No. 9513.*** Moreover, respondent in the ***CBK Case*** secured a ruling from petitioner unequivocally confirming that its sale of electricity qualifies for VAT zero-rating pursuant to ***Section 108(B)(7) of the NIRC***.

In view of the foregoing, this Court finds no reason not to apply ***R.A. No. 9513 and its IRR*** as the special law governing fiscal incentives granted to RE Developers, such as petitioner's claim in the present case.

---

[7] Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue, G.R. No. 198146, 8 August 2017 *citing* Commissioner of Internal Revenue v. Philippine Airlines, Inc., G.R. No. 180066, 7 July 2009.

[8] *See* Section 2, R.A. No. 9513.

[9] Senator Leila M. De Lima v. Hon. Juanita Guerrero, *et al.*, G.R. No. 229781, 10 October 2017 *citing* Liwayway Vinzons-Chato v. Fortune Tobacco Corporation, G.R. No. 141309, 19 June 2007; Rogelio De Jesus v. People of the Philippines, *et al.*, G.R. No. L-61998, 22 February 1983.

[10] Elaine R. Abanto, *et al.* v. The Board of Directors of the Development Bank of the Philippines, *et al.*, G.R. Nos. 207281, 5 March 2019 *citing* Senator Leila M. De Lima v. Hon. Juanita Guerrero, *et al.*, G.R. No. 229781, 10 October 2017.

[11] CTA *EB* Case No. 1861 (CTA Case No. 8246 & 8302), 25 October 2019.

[12] *See* pars. 14 and 15, Petition for Review, Records, p. 12.

We thus reiterate our ruling in the assailed Decision that to qualify for VAT zero-rating, RE Developers must comply with the provisions of ***Section 15(g) of R.A. No. 9513*** and ***Section 18 of its IRR***. Otherwise, the claim for refund of unutilized input VAT attributable to sale of fuel or power generated from renewable sources of energy must fail for failure to establish zero-rated sales. We emphasize the pertinent portions of our Decision:

> "As required under the foregoing provisions, **the following documents <u>must</u> be secured by a RE Developer in order to qualify for VAT zero-rating**, as contemplated under RA No. 9513 and its IRR, to wit:
>
> 1.) DOE Certificate of Registration;
> 2.) Registration with the BOI; **<u>and</u>**
> 3.) Certificate of Endorsement by the DOE.
>
> Here, records show that petitioner was issued a DOE Certificate of Registration No. GRESC 2011-01-025 on 5 January 2011 and a Certificate of Registration No. 2011-006 by the Board of Investments on 7 January 2011.
>
> However, **there is no showing that petitioner was issued a Certificate of Endorsement by the DOE on a per transaction basis.** Without this third requirement, petitioner's alleged sales, if any, **do not qualify for VAT zero-rating.**"[13]

Indeed, the Court has been consistent in ruling that all three requirements are needed. In ***Halliburton Worldwide Limited- Philippine Branch v. Commissioner of Internal Revenue***,[14] we held that the DOE Certificate of Registration, Registration with the BOI, and the DOE Certificate of Endorsement of the RE Developer must all be presented to prove that the purchases of the RE Developer are VAT zero-rated pursuant to ***Section 15(g) of R.A. No. 9513*** and its ***IRR*** and, consequently, for the purchaser's claim for refund to prosper.

Similarly, in ***North Luzon Renewable Energy, Corp. v. Commissioner of Internal Revenue***[15] and ***Philippine Geothermal Production Company, Inc. v. Commissioner of Internal Revenue***,[16] it was also held that all three (3) documents must be presented, otherwise, the sale could not qualify for VAT zero-rating pursuant to ***Section 15(g) R.A. No. 9513*** and its ***IRR***. The use of the word "shall" in the IRR indicates mandatory submission of the requirements in order to qualify for VAT zero-rating.[17]

While we agree with petitioner that ***Section 15(g) of R.A. No. 9513*** merely requires a Certificate of Registration from the DOE to avail of the incentives thereunder, there is also nothing in ***R.A. No. 9513*** that prohibits the DOE, as the agency primarily tasked with the promulgation of the

---

[13] Emphasis and underscoring supplied.
[14] CTA *EB* Case No. 2022 and 2042 (CTA Case No. 9449), 29 October 2020.
[15] CTA Case No. 9886, 19 February 2021.
[16] CTA Case Nos. 9208 & 9274, 24 July 2020.
[17] *Ibid.*

implementing rules and regulations of ***R.A. No. 9513***,[18] from prescribing additional requirements from RE Developers to avail of the incentives pursuant to the said law. In fact, ***Section 26 of R.A. No. 9513*** provides that the DOE Certification shall be without prejudice to any additional requirements that may be imposed by concerned agencies tasked with the administration of fiscal incentives.[19]

Significantly, the case of ***La Suerte Cigar & Cigarette Factory v. Court of Appeals***,[20] is instructive on the nature and weight of rules and regulations issued by administrative agencies:

> "Thus, rules and regulations implementing the law are **designed to fill in the details** **or** **to make explicit what is general**, which otherwise cannot all be incorporated in the provision of the law. Such rules and regulations, when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, "**deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields.**"…"[21]

Accordingly, the DOE, as the agency primarily tasked with the implementation of ***R.A. No. 9513***, may issue rules and regulations necessary to fill in the details and for the effective enforcement of the law. Thus, with petitioner's failure to sufficiently prove compliance with ***R.A. No. 9513*** and its ***IRR***, this Court is constrained to deny its refund claim for failure to establish that it is engaged in zero-rated sales.

Notwithstanding petitioner's failure to sufficiently prove that it is engaged in zero-rated sales, we will nonetheless discuss the second issue on petitioner's failure to establish the existence of its alleged zero-rated sales.

Petitioner contends that this Court has determined in its earlier VAT refund case[22] that it has sufficiently established the existence of zero-rated sales for the first quarter of 2014. Its position on this point is futile. Generally, courts are not required to take judicial notice of facts involved in another case even if tried by the same court itself or involving the same parties. Each and every case is distinct and separate in character and matter, although similar parties may have been involved.[23] The power to take judicial notice must be exercised with caution, and every reasonable doubt on the subject should be ample reason for the claim of judicial notice to be promptly resolved in the negative.[24] More importantly, the issue of the existence of zero-rated sales is not decisive in the present case, as we have already earlier ruled that petitioner

---

[18] *See* Sec. 33, R.A. No. 9513.
[19] *See* Sec. 26, R.A. No. 9513.
[20] G.R. Nos. 125346, 136328-29, 144942, 148605, 158197 & 165499, 11 November 2014.
[21] Citations omitted. Emphasis and underscoring supplied.
[22] Commissioner of Internal Revenue v. Maibarara Geothermal, Inc., CTA *EB* Case No. 1863 (CTA Case Nos. 8871, 8937, 8999, and 9042) 4 October 2019.
[23] Silkair (Singapore) Pte. Ltd v. Commissioner of Internal Revenue, G.R. No. 184398, 25 February 2010.
[24] Spouses Omar and Moshiera Latip v. Rosalie Palaña Chua, G.R. No. 177809, 16 October 2009.

failed to establish that it is engaged in zero-rated sales under ***R.A. No. 9513*** and its ***IRR***.

Petitioner also insists that its Amended Quarterly VAT Return for the first quarter of taxable year 2014 and Official Receipt No. 0501 (Exhibit "P-59") established the existence of its zero-rated sales, which were impliedly recognized by the Court in Division. To prove the existence of zero-rated sales, petitioner prays that a Commissioner's Hearing be set for the marking and comparison of a clearer copy of its Official Receipt No. 0501 (Exhibit "P-59") with the original document or, in the alternative, remand the case to the Special First Division for the sole purpose of comparing and marking the clearer copy of Exhibit "P-59."

Considering that the argument and the submitted evidence of petitioner on this point have been thoroughly considered, examined, and passed upon by this Court in the assailed Decision, we find no reason to reiterate our disquisition on the matter. It is thus not necessary to remand the case to the Special First Division nor to grant a Commissioner's Hearing.

As a final note, we reiterate that actions for tax refund or credit, as in the present case, are in the nature of a claim for exemption and the law is construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Accordingly, it is the claimant's burden to prove the factual basis of its claim.

In view of the foregoing, the Court finds no justifiable reason to reverse or modify the conclusions reached in the assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration [Decision dated November 26, 2020]** is **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I maintain my concurrence with JMBV's DO dated Nov. 26, 2020.)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, I maintain my DO.)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice