REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE GEOTHERMAL PRODUCTION COMPANY INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9048

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JUL 10 2018 4:14 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For this Court's resolution is petitioner's **Motion for Reconsideration**, filed on April 6, 2018, with respondent's **Comment Re: Petitioner's Motion for Reconsideration**, filed on April 26, 2018.

Petitioner seeks reconsideration of the Court's Decision promulgated on March 21, 2018 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

In the assailed Decision, the Court denied the petition on the ground that the evidence submitted by petitioner to prove that its sales of power generated through geothermal energy for the fourth quarter of 2012 qualify for value added tax (VAT) zero-rating is not sufficient.

The Court found that petitioner is not yet certified by the Department of Energy (DOE) renewable energy (RE) developer during the fourth quarter of 2012. Its registration with the DOE took effect only on April 25, 2013. Hence, it is not yet entitled at that time to any of the incentives granted under Republic Act (RA) No. 9513, particularly the VAT zero-rating treatment of the sale of power generated through geothermal energy.

Moreover, the Court found that petitioner failed to establish that it is a generation company as defined under Seciton 4.108-3(f) of Revenue Regulations No. 16-2005, for failure to secure a Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC).

In its motion for reconsideration, petitioner raises the following arguments: (1) petitioner is a renewable energy developer that sells steam to a generation company and not a generation company, thus it is not required to secure a COC with the ERC; and (2) the DOE registration is not a condition sine qua non before petitioner can claim for VAT refund for the 4th quarter of the taxable year 2012.

Petitioner manifests that under its Amended Articles of Incorporation,[1] it is primarily engaged in the business of supplying fuel (steam or geothermal resource) to power plants as a steamfield operator not as a generation company, which produces electricity. In consonance with its primary purpose, petitioner through its assignor, Philippine Geothermal, Inc. (PGI) entered into a service contract with the National Power Corporation (NPC) on September 10, 1971, to process and produce geothermal energy in a form of steam and supply the same to a power plant such as NPC.[2]

Moreover, petitioner avers that although its registration with the DOE is dated April 25, 2013,[3] its sales prior to said date, particularly the fourth quarter of 2012, are already VAT zero-rated.

[1] Exhibit "P-3", docket, vol. III, pp. 804-819.
[2] Exhibit "P-47", docket, vol. III, pp. 969-1034.
[3] Exhibits "P-6" and "P-7", docket, vol. III, pp. 859 and 897.

Respondent, in its comment, maintains that considering that petitioner failed to submit the required documents to establish its entitlement to a refund, the petition should fail and the motion for reconsideration should likewise be denied.

After careful reconsideration of the arguments raised by the parties, the Court agrees that petitioner is not a generation company. Hence, it is not required to secure a COC from ERC.

However, the Court still finds that petitioner is not entitled to a refund for the fourth quarter of 2012.

DOE Department Circular No. DC2009-07-0011, as cited in petitioner's motion for reconsideration, provides:

> "CHAPTER II. RE SERVICE/OPERATING CONTRACTS
>
> SEC. 4. Nature of RE Contract –
>
> xxx
>
> (b) Conversion of RE Contract: -
>
> xxx
>
> ii. From Existing Service Contract Agreement on RE Resources to RE Contracts under the Act and this Circular – For an existing RE project, the contract holder may elect to convert its Service Contract/Agreement under applicable laws by applying for an RE contract under the Act and this Circular. The approval of such application shall be carried out on the basis of its prior rights over the contract area.
>
> **Any individual or juridical entity with a valid and existing service or development contracts and agreements with DOE/Government for the exploration, development or utilization of RE resource shall be deemed provisionally registered as an RE Developer under the Act which registration shall subsist until the issuance of DOE Certificate of Registration provided for under Section 18 of the IRR. <u>For this purpose, the DOE shall issue the corresponding provisional</u>**

certificate of registration, pursuant to Section 39 of the IRR, upon receipt of the RE Developer's letter of intent for conversion to RE Contract." (*Emphasis and underscoring supplied.*)

Based on the foregoing, the DOE shall issue a provisional certificate of registration upon receipt of the RE developer's letter of intent. Said provisional certificate of registration shall serve as RE developer's document while the actual certificate of registration has not yet been issued.

In the instant case, petitioner filed its letter of intent[4] prior to the subject period of the claim for refund, however, it failed to submit its provisional certificate of registration issued by the DOE to support its alleged VAT zero-rating for the fourth quarter of 2012.

Therefore, finding no cogent reason to reverse the assailed Decision, the Court finds that the denial of Petition for Review filed by Philippine Geothermal Production Company Inc. should be affirmed.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[4] Exhibit "P-12", docket, vol. III, p. 906.