**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB NO. 1894**
(CTA Case No. 9048)

Present:
**DEL ROSARIO,** *P.J.,*
**CASTAÑEDA, JR.,**
**UY,**
**FABON-VICTORINO,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:
JUN 26 2020 11:20 a.m.

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# RESOLUTION

This resolves Petitioner's "Motion for Reconsideration (RE: Decision dated November 21, 2019)"[1] ("Motion for Reconsideration") filed on December 10, 2019, without Respondent's "Opposition" filed on February 20, 2020, seeking to reverse the Decision[2] promulgated on November 21, 2019 ("Assailed Decision") and an amended decision be issued granting Petitioner's claim for refund of its unutilized input value-added tax ("VAT") in the amount of Php14,145,000.00.

The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED**. The Decision dated March 21, 2018 and the Resolution dated July 10, 2018 of the Second Division in CTA Case No. 9048 are **AFFIRMED**.

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1 Rollo, pp. 66-75.
2 *Id.,* pp. 47-59.

**SO ORDERED.**"[3]

In his Motion for Reconsideration, Petitioner claims that it should not suffer for the delay in action of the Department of Energy ("DOE") to issue the provisional certification under DOE Department Circular No. DC-2007-07-0011. According to Petitioner, it was able to present with the court *a quo* a Letter of Intent dated April 04, 2012 (*i.e.,* Exhibit P-12) which showed that it applied for a certificate of registration with the DOE based on the said Department Circular. However, Petitioner was not issued a provisional certification despite its submission of the letter of intent. It is the ministerial duty of the DOE to issue said certificate upon receipt of the letter of intent and its non-issuance thereof should not prejudice Petitioner.

Moreover, Petitioner avers that its entitlement to the VAT refund emanates from its service contract with the National Power Corporation (NPC). Considering that there is an existing service contract between Petitioner and the government, Petitioner shall be deemed provisionally registered as a Renewable Energy ("RE") developer under the Republic Act No. 9513[4] or the Renewable Energy Act of 2008, in relation to DOE Department Circular No. DC-2007-07-0011, which registration shall subsist until the issuance of its DOE Certificate of Registration on April 25, 2013.

On the other hand, Respondent maintains that Petitioner failed to prove that it was provisionally registered as an RE Developer.

We resolve to deny the motion for lack of merit.

Review of Petitioner's arguments shows that the same were sufficiently addressed and passed upon in the Assailed Decision. At any rate, the Court shall reiterate the pertinent portions of said Decision in order to prove its point.

As previously discussed in the Assailed Decision, the entitlement or enjoyment of the tax incentives under the Renewable Energy Act of 2008 is not automatic. The law requires that the entity claiming said incentive be "duly certified" by the DOE as an RE Developer, that is, it must have a Certificate of Registration[5] or at the very least, a provisional certificate of registration[6] if it it has an existing service contract with the government.

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3 *Id.,* p. 128.
4 Approved December 16, 2008.
5 Department of Energy Circular No. DC2009-05-0008, Section 18(A).
6 Department of Energy Circular No. DC-2007-07-0011, Section 4(b)(ii), paragraph 2.

The registration is a formal requirement for entitlement to such incentive. Failure of an enterprise to secure a Certificate of Registration or a provisional one shall amount to forfeiture of said incentive for a particular taxable period.

Undisputedly, Petitioner failed to secure the necessary registration for the fourth quarter of 2012. The Certificates of Registration presented by Petitioner both took effect only on April 25, 2013[7]. Prior to this, Petitioner was without any provisional certificate of registration issued in its name.

For this reason, Petitioner's sales for the fourth quarter of 2012 cannot qualify under the Renewable Energy Act of 2008 as zero-rated. Instead, they are subjected correctly to twelve percent (12%) value-added tax (VAT) under the National Internal Revenue Code (NIRC) of 1997, as amended.

Additionally, We do not uphold Petitioner's argument that the DOE has a ministerial duty to issue a provisional certificate of registration upon receipt of a letter of intent. Petitioner's insistence that the submission of a letter of intent to the DOE constitutes full compliance with the rule on provisional certification/registration is belied by the Circular itself.

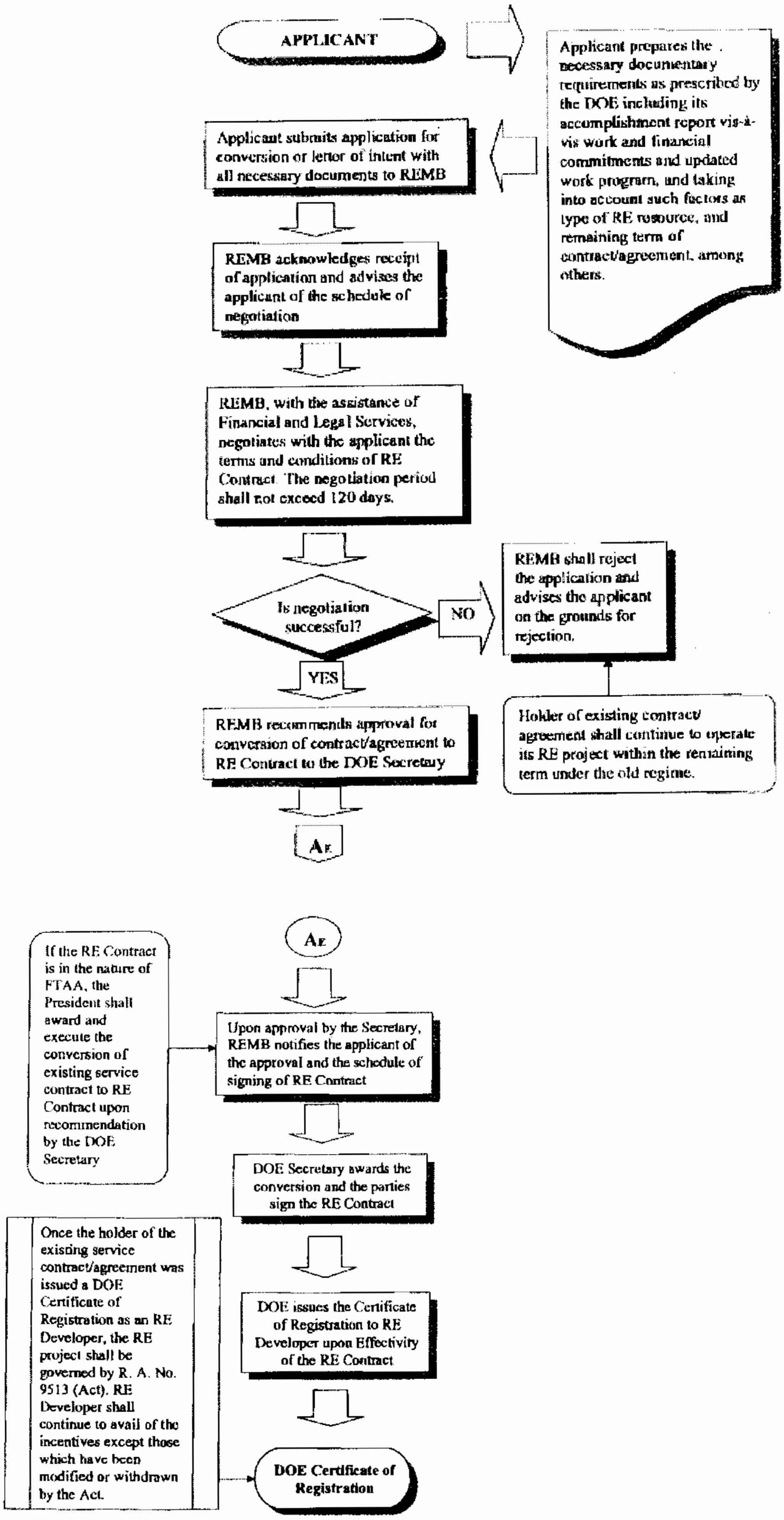
Annex B of Department Circular No. DC-2007-07-0011 prescribes a checklist of requirements for conversion from existing Contracts to RE Contracts, as follows:

1) Letter of Intent from the Developer requesting for the conversion of the existing Contract/Agreement to RE Contract;
2) Accomplishment Report vis-a-vis work and financial program;
3) Updated Work Program; and
4) Such other documents that may be required by the DOE

Moreover, the circular provides a flowchart detailing the process of conversion from an existing service contract/agreement to an RE Contract. As shown below, the process starts with the submission of a <u>letter of intent with all necessary documents</u> for approval and issuance of a Certificate of Registration:

**<u>CONVERSION OF EXISTING SERVICE CONTRACT/AGREEMENT ON RE RESOURCES TO RE CONTRACT UNDER R.A. No. 9513</u>**

7 Docket, Exhibits "P-6" to "P-7", pp. 859 and 897.


APPLICANT
Applicant prepares the necessary documentary requirements as prescribed by the DOE including its accomplishment report vis-à-vis work and financial commitments and updated work program, and taking into account such factors as type of RE resource, and remaining term of contract/agreement, among others.
Applicant submits application for conversion or letter of intent with all necessary documents to REMB
REMB acknowledges receipt of application and advises the applicant of the schedule of negotiation
REMB, with the assistance of Financial and Legal Services, negotiates with the applicant the terms and conditions of RE Contract. The negotiation period shall not exceed 120 days.
Is negotiation successful?
NO
REMB shall reject the application and advises the applicant on the grounds for rejection.
Holder of existing contract/ agreement shall continue to operate its RE project within the remaining term under the old regime.
YES
REMB recommends approval for conversion of contract/agreement to RE Contract to the DOE Secretary
AE
AE
If the RE Contract is in the nature of FTAA, the President shall award and execute the conversion of existing service contract to RE Contract upon recommendation by the DOE Secretary
Upon approval by the Secretary, REMB notifies the applicant of the approval and the schedule of signing of RE Contract
DOE Secretary awards the conversion and the parties sign the RE Contract
Once the holder of the existing service contract/agreement was issued a DOE Certificate of Registration as an RE Developer, the RE project shall be governed by R. A. No. 9513 (Act). RE Developer shall continue to avail of the incentives except those which have been modified or withdrawn by the Act.
DOE issues the Certificate of Registration to RE Developer upon Effectivity of the RE Contract
DOE Certificate of Registration

From all of the foregoing, We find no cogent reason to reverse the Assailed Decision. The VAT on royalty payments to Petitioner's non-resident suppliers in December 2012 amounting to Php14,145,000.00 was not erroneously paid.

**WHEREFORE**, premises considered, Petitioner's "Motion for Reconsideration (RE: Decision dated November 21, 2019)" is **DENIED** for lack of merit.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
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

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice