REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
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VESTAS SERVICES PHILIPPINES, INC., Petitioner,	**CTA Case No. 9544**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAY 19 2021 1:54 p.m.

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RESOLUTION

UY, *J*.:

For resolution is the ***MOTION FOR RECONSIDERATION (RE: DECISION DATED 11 NOVEMBER 2020)***[1] filed by petitioner Vestas Services Philippines, Inc., on December 18, 2020, with respondent Commissioner of Internal Revenue's (CIR) ***COMMENT/OPPOSITION (on Petitioner's Motion for Reconsideration)***[2] filed *via* registered mail on January 27, 2021 and received by the Court on February 3, 2021, praying for the reversal and setting aside of the Decision[3] dated November 11, 2020. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**"

[1] Docket – Vol. III, pp. 1335 to 1348.
[2] Docket – Vol. III, pp. 1336 to 1344.
[3] Docket – Vol. III, pp. 1315 to 1334.

Petitioner's arguments:

In support of its *Motion*, petitioner reiterates that its sales to EDC is subject to zero percent value-added tax (VAT) under Section 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Petitioner insists that Republic Act No. 9513 (RA 9513) does not require a *Certificate of Endorsement* issued by the Department of Energy (DOE), on a per transaction basis, for the imposition of zero percent VAT rate on RE Developer's local purchases of goods, properties and services.

According to petitioner, while Section 18 (C) of the Implementing Rules and Regulations (IRR) of RA 9513 requires RE developers to secure a *Certificate of Endorsement* from the DOE, a plain reading of RA 9513 and its IRR will show that this requirement is only applicable for certain incentives. Further, petitioner posits that Section 18 (C) of the IRR of RA 9513 appears to have been issued merely to implement Section 26 of RA 9513; and that under Chapter VII, there are certain incentives, which specifically require prior endorsement and/or approval by the DOE, through the Renewable Energy Management Bureau (REMB), to be obtained on a transaction basis.

Petitioner likewise argues that requiring such *Certificate of Endorsement* for all the other incentives will be contrary to Section 25 of RA 9513 which provides that the *Certificate of Registration* is sufficient basis of the RE Developer's entitlement to incentives.

In addition, petitioner claims that it is not an RE developer, manufacturer, fabricator or supplier of locally-produced RE equipment; and that it is not required to submit the necessary certification under Section 18 of the IRR of RA 9513.

Finally, petitioner contends that the *strictissimi juris* doctrine must not be used against a taxpayer when the claim is clearly shown based on language in law too plain to be mistaken.

Respondent's counter-arguments:

In his *Comment/Opposition*, respondent maintains that petitioner's sales to EDC for the 3rd quarter of calendar year 2014 are not zero-rated sales. According to respondent, a *Certificate of Endorsement* issued to EDC by DOE, on a per transaction basis, must first be secured and presented by petitioner to avail of the zero percent VAT incentive of EDC on its purchases of local supply of goods, properties and services; and that failure to secure and present the said *Certificate* is fatal to petitioner's claim.

Moreover, respondent contends that Section 18 of the IRR of RA 9513 applies to all incentives provided under RA 9513, including the zero percent VAT on RE developer's purchases of local goods, properties and services needed for the development, construction and installation of its plant facilities. Thus, in order to prove that its sales transaction to EDC are zero-rated or effectively zero-rated, petitioner is required to submit the *Certificate of Endorsement* issued by DOE to EDC.

Respondent further submits that claim for refund is strictly construed against the taxpayer for the same partakes the nature of tax exemption.

THE COURT'S RULING

We deny the instant *Motion for Reconsideration.*

After careful examination and consideration of the instant *Motion*, it is noted that the arguments raised therein are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision.

The Court finds no merit in petitioner's contentions that the submission of the *Certificate of Endorsement* is only applicable to certain incentives; and that Section 18 (C) of the IRR of RA 9513 appears to have been issued merely to implement Section 26 of RA 9513.

Section 18 (C) of the IRR of RA 9513 provides as follows:

"SEC. 18. ***Conditions for Availment of Incentives and Other Privileges***

xxx xxx xxx

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> *C. __Certificate of Endorsement by the DOE__*
>
> **__RE Developers__,** and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall be qualified to avail of the incentives provided for in the Act __only after securing a Certificate of Endorsement__ from the DOE, through the REMB, on a per transaction basis.**
>
> The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; Provided, That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR." (*Emphasis and underscoring supplied*)

Based on the foregoing, it is evident that Section 18 (C) of the IRR of RA 9513 makes no distinction as to what type of incentive it applies. Since the law makes no distinction or exemptions, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos.*[4]

Further, contrary to petitioner's allegation, Section 18 (C) of the IRR of RA 9513 does not appear to have been issued merely to implement Section 26 of RA 9513. As can be gleaned from the afore-quoted Section 18, the RE developer's *Certificate of Endorsement* issued by the DOE is a __condition__ for the entitlement to the incentives and other privileges under RA 9513. It is thus apparent that said *Certificate of Endorsement* is required for purposes of entitlement to the incentives and privileges under RA 9513, and not simply confined to Section 26.

As held in the assailed Decision, in order to avail the incentives under RA 9513, *i.e. VAT zero-rating*, it must be shown that a *Certificate of Endorsement* was issued by the DOE to the RE developer. Otherwise, the transaction of the concerned RE developer (*i.e.,* EDC), as purchaser, cannot be considered as subject to VAT zero-rating.

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[4] *Ricardo V. Castillo v. Uniwide Warehouse Club, Inc. and/or Jimmy Gow,* G.R. No. 169725, April 30, 2010.

In the instant case, however, petitioner failed to present the requisite *Certificate of Endorsement* issued to EDC by the DOE, on a per transaction basis. Absent the said certificate, the Court cannot treat petitioner's gross receipts of ₱1,494,848,562.00, representing its sales to EDC, as subject to VAT zero-rating under the law.

It must be stressed that actions for tax refund or credit, as in the instant case, is in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[5]

Finding no compelling reason to reconsider, modify or reverse Our Decision, We shall no longer belabor in this Resolution, to repeat the disquisitions made therein.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[5] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.