REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1861** **(CTA Case Nos. 8246 & 8302)**
	Present:
-versus-	Del Rosario, *P.J.,* Castañeda, Jr., Uy, Fabon-Victorino, Ringpis-Liban, Manahan, Bacorro-Villena, *and* Modesto-San Pedro, *JJ.*
CBK POWER COMPANY LIMITED, Respondent.	**Promulgated:** JUN 26 2020 3:45 p.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

This resolves the Motion for Reconsideration (Re: Decision promulgated 25 October 2019) filed by petitioner on November 8, 2019,[1] with respondent's Comment on/Opposition to Petitioner's Motion for Reconsideration (Re: Decision dated October 25, 2019) filed on December 19, 2019.[2]

In the motion, petitioner restated that respondent CBK Power Company Limited (CBK) is not entitled to a tax refund or credit of its unutilized input Value-Added Tax (VAT) incurred in relation to its zero-rated sales of electricity to the NPC for the first quarter of CY 2009 because CBK, as a *renewable energy developer* under Section 15 of Republic Act No. 9513 (RA 9513), is entitled to VAT zero-rate on its purchases of local supply of goods,

[1] *Rollo*, pp. 189-198.
[2] *Id.* at pp. 240-248.

properties and services needed for the development, construction and installation of its plant facilities.[3]

Petitioner, however, failed to support this legal theory with concrete evidence. It will be recalled that during trial before the Court *a quo*, petitioner manifested that he had no evidence to present since the Revenue Officer assigned to the case submitted no report of investigation.[4] Specifically, petitioner failed to present any evidence, documentary or otherwise, to prove that CBK is a renewable energy developer under RA 9513.

Petitioner, now attempts to rectify this omission and moves for reconsideration of the Court *En Banc*'s decision by stating that "no evidence was presented by respondent to prove that indeed it is *not* registered as a renewable energy developer with the DOE. The Honorable Court merely ruled that there is nothing on record that will prove otherwise."

The Court *En Banc* resolves to deny the motion.

First, it was petitioner who invoked Section 15 of RA 9513 to oppose the claim of respondent CBK. Yet petitioner is of the view that respondent, the taxpayer, is required to produce the evidence to prove *his* own theory to defeat the taxpayer's claim. Petitioner could have, at least, referred to a particular piece of evidence presented by the respondent that would support this point, but he failed to do this as well. Petitioner's bare allegation, therefore, cannot be accorded credence for lack of evidentiary support.

Second, the basic rule is that he who alleges must prove his case. The allegation that CBK is a renewable energy developer as defined in RA 9513, like all other allegations, must be proven by clear, positive, and convincing evidence by the party alleging it.[5]

Affirmanti non neganti incumbit probatio[6] is a Latin maxim that means the burden of proof is upon him who affirms - not on him who denies. It is the duty of the person who asserts something to produce evidence in order to prove it. In other words, petitioner is incorrect to insist that "respondent could have at least presented a certification from the DOE that indeed it is *not* registered as a renewable energy developer."[7]

Third, as discussed in the assailed decision, the basis of CBK's claim as generation company of hydroelectric power is *not* RA 9513 but Sections 108(B)(7) and 112(A) of the National Internal Revenue Code of 1997 (1997

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[3] *Rollo*, p. 191.
[4] Decision, *Rollo*, p. 173.
[5] *Francisco Lim v. Equitable PCI Bank now known as the Banco De Oro Unibank, Inc.*, G.R. No. 183918, January 15, 2014.
[6] Oxford Reference, Guide to Latin in International Law, https://www.oxfordreference.com/view/10.1093/acref/9780195369380.001.0001/acref-9780195369380-e-155, last accessed February 28, 2020.
[7] Motion for Reconsideration (Re: Decision promulgated 25 October 2019), *Rollo*, p. 191; Italics supplied.

NIRC), as amended, in relation to RA 9136 (Electric Power Industry Reform Act of 2001).

Finally, petitioner's arguments against the Court *En Banc's* findings that the input VAT paid by CBK were attributable to its zero-rated sales of electricity to NPC[8] have already been addressed in detail as follows:[9]

> "Once again, without showing contrary evidence, the petitioner reiterates a sweeping statement that the Court *a quo* failed to make a determination on whether the input VAT paid by CBK were attributable to zero-rated sales of electricity to NPC.
>
> The CIR failed to note that based on CBK's quarterly VAT returns for CY 2009 and its VAT invoices and official receipts issued to NPC, which were verified in the ICPA report, CBK reported in its first quarter return a total sales of ₱1,113,056,584.68. It was also ascertained through the ICPA that the *entire* amount of ₱1,113,056,584.68 constitutes CBK's zero-rated sales to NPC. Accordingly, the Court *a quo* was justified in adopting the same conclusion in its June 10, 2014 Decision:
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>> "And a verification of various sales invoices and official receipts issued by petitioner to NPC showed that for the first (1st) and second (2nd) quarters of 2009, it has derived revenues from sales of electricity to NPC in the amount of P1,949,421,902.14 which was reflected in its Quarterly VAT Returns, as follows:
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>> | **Exhibit** | **Period** | **Zero-rated Sales** |
>> |---|---|---|
>> | "BB-1-002e" | 1st Quarter | ₱1,113,056,584.68 |
>> | "BB-2-002e" | 2nd Quarter | 836,365,317.46 |
>> | | **Total** | **₱1,949,421,902.14** |
>>
>> With the foregoing sales of electricity generated through a renewable source of energy, particularly, hydropower, the Court finds that the same qualifies for VAT zero-rating under Section 108 (B)(7) of the 1997 NIRC, as amended." (*Underscoring supplied*)
>
> It must be emphasized that once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party, that is, the CIR. The CIR, however, opted not to present any evidence to contest the instant claim.

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[8] *Id.*
[9] Decision, *Rollo*, pp. 184-185.

Third, there is no cogent reason for the Court to reverse the finding that the input VAT subject of the refund claim was sufficiently proven also based on the evidence vouched by the ICPA and presented during trial.

In support of its refund claim, CBK established the amount of input VAT paid through its suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRD), BOC and bank official receipts, which were examined by the Court-commissioned ICPA. Except for certain disallowances, the Court *a quo* found CBK's evidence sufficient to prove that it actually paid input VAT for its purchases for the first and second quarters of CY2009: xxx" (*Underscoring supplied and citations omitted*)

The Court *a quo*, furthermore, concluded in its June 10, 2014 Decision that CBK's reported sales for the first and second quarters of 2009 were *all* zero-rated. Accordingly, the substantiated input VAT, originally computed at ₱22,126,419.93 but reduced to ₱16,403,190.69 in the February 2, 2018 Amended Decision, were *entirely* attributed to CBK's zero-rated sales:[10]

> "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 **₱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 ₱17,784,968.91, and ₱31,680,290.87, 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." (*Underscoring and emphasis supplied*)

The appreciation of evidence is the purview of trial courts. Thus, factual findings of trial courts are entitled to great weight and respect on appeal, especially when established by *unrebutted* testimonial and documentary evidence,[11] as in this case. The Court *En Banc*, therefore, sees no compelling reason to warrant departure from the factual findings of the Court *a quo*.

WHEREFORE, premises considered, the Motion for Reconsideration (Re: Decision promulgated 25 October 2019) is **DENIED** for lack of merit.

SO ORDERED.

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

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[10] June 10, 2014 Decision, Division Docket (CTA Case No. 8246), Vol. 3, pp. 1838-1839.
[11] *Seven Brothers Shipping Corporation v. DMC-Construction Resources, Inc.*, G.R. No. 193914, November 26, 2014.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice