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, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, *and* Modesto-San Pedro, *JJ.*
CBK POWER COMPANY LIMITED, Respondent.	**Promulgated:** OCT 25 2019 4:16 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) under Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court which seek the reversal of the following:

1. February 2, 2018 Amended Decision[1] of the CTA Special Third Division[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Decision and the Resolution dated June 10, 2014 and September 8, 2014, respectively, are hereby **AFFIRMED with MODIFICATION**. Respondent is hereby **ORDERED to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SIXTEEN MILLION FOUR HUNDRED THREE THOUSAND ONE**

[1] Annex A, Petition for Review, *Rollo*, pp. 29-44.
[2] Penned by Associate Justice Lovell R. Bautista with the concurrence of Associate Justices Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban.

HUNDRED NINETY AND 69/100 PESOS (PHP16,403,190.69) representing unutilized input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the first quarter of CY 2009.

SO ORDERED."

2. May 4, 2018 Resolution[3] denying herein petitioner CIR's Motion for Reconsideration for lack of merit.

THE FACTS

The facts are summarized from the June 10, 2014 Decision, the February 2, 2018 Amended Decision and condensed from the records, as follows:

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR), vested with authority to act as such, including, *inter alia*, the power to decide, approve, and grant refunds or tax credits of erroneously or illegally collected internal revenue taxes, as provided by law, with office address at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[4]

Respondent CBK Power Company Limited (CBK) is a partnership organized and existing under the laws of the Philippines with principal office at the NPC Compound, Kalayaan, Laguna.[5] It is registered with the Securities and Exchange Commission (SEC) with Registration Number A200004027 and, as a special purpose entity its sole purpose is to engage in all aspects of (a) design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of the Kalayaan II pumped-storage hydroelectric power plant, the New Caliraya Spillway, and other assets to be located in the Province of Laguna, and (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan, and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna.[6] CBK is also registered as Value-Added Tax (VAT) taxpayer with Tax Identification Number 205-760-474-000.[7]

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[3] Annex B, Petition for Review, *Rollo*, pp. 45-51.
[4] Amended Decision, *Rollo*, p. 30.
[5] *Id.*
[6] Amended Certificate of Partnership, Exhibit "K", Division Docket (8246), Vol. 2, pp. 1439-1440.
[7] BIR Certificate of Registration, Exhibit "M", Division Docket (8246), Vol. 2, p. 1456.

Relevant Facts

On November 6, 1998, the National Power Corporation (NPC) entered into a Build-Rehabilitate-Operate-Transfer Agreement (BROT Agreement) with Industrias Metalurgicas Pescarmona, S.A. (IMPSA or Contractor), a corporation duly organized and existing under the laws of Argentina, whereby IMPSA shall undertake to finance, design, build, rehabilitate, upgrade, expand, commission, test, operate, maintain and manage the Caliraya, Botocan and Kalayaan hydroelectric power plants under the terms and conditions set forth in the BROT Agreement under the BOT Law for the purpose of regulating frequency, generating electricity and providing the ancillary services.[8]

The BROT Agreement was amended and supplemented by First Accession Undertaking dated February 18, 1999 among the NPC, IMPSA and CBK Power Corporation, whereby the latter acceded to the rights and obligations of IMPSA under the BROT Agreement.[9]

In a Turnkey Contract dated August 18, 2000, CBK entered into an agreement with IMPSA Construction Corporation whereby IMPSA Construction Corporation, as Contractor, represented itself to be technically and financially capable of undertaking the design, engineering, procurement, supply of all plant and materials, rehabilitation, construction, commissioning, testing, completion and handover of the power plants, together with the civil structures, access roads and other works as specified in the BROT Agreement among CBK, NPC and IMPSA, on a fixed price, turnkey basis.[10]

Subsequently, the BROT Agreement was further supplemented by a Second Accession Undertaking dated September 20, 2000, to which CBK became a party together with NPC, IMPSA and CBK Power Corporation. Under the Second Accession Undertaking, CBK acceded to the rights and obligations of CBK Power Corporation under the BROT Agreement, and CBK agreed to undertake the rehabilitation, construction and operation, on a build-operate-and-transfer basis, of the hydroelectric power plants known as Caliraya, Botocan, Kalayaan I and Kalayaan II in the Province of Laguna.[11]

Pursuant to the above-mentioned agreements, NPC turned over and transferred to CBK full possession, care, use, and maintenance of its plants (CBK Complex, i.e., Caliraya, Botocan, Kalayaan I, and all Civil Structures existing as of the date of the BROT Agreement as described in Section 15

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[8] BIR Ruling No. DA-146-2006 dated March 17, 2006, Exhibit "J", Division Docket (8246), Vol. 2, p. 1433; Build Rehabilitate Operate Transfer (BROT) Agreement, Exhibit "C", Division Docket (8246), Vol. 2, pp. 1077-1235.

[9] BIR Ruling No. DA-146-2006 dated March 17, 2006, Exhibit "J", Division Docket (8246), Vol. 2, p. 1434.

[10] Administrative Claim for Refund dated November 26, 2010, Exhibit "A", Division Docket (8246), Vol. 2, pp. 1054-1055; Turnkey Contract Between CBK Power Company Limited and IMPSA Construction Corporation, Exhibit "E", Division Docket (8246), Vol. 2, pp. 1246-1427.

[11] BIR Ruling No. DA-146-2006 dated March 17, 2006, Exhibit "J", Division Docket (8246), Vol. 2, p. 1434; Second Accession Undertaking, Exhibit "D", Division Docket (8246), Vol. 2, pp. 1237-1244.

thereof, as the same may be upgraded pursuant to the Agreement and, when constructed pursuant to the Agreement, Kalayaan II and all new Civil Structures, including all land, buildings and structures forming part thereof), including parts of the Sites that were to be delivered on Turnover Date, and all buildings, structures, improvements, machinery, equipment, vehicles, heavy equipment, water systems, fire-fighting systems, civil works, perimeter fences and internal roads, facilities, and all other assets presently in use in the CBK Complex.[12]

After the turnover date, CBK took full possession, control, and operation of the CBK Complex, and assumed all attendant risks over said plants. CBK engaged in the supply of electricity to NPC. Electricity was generated by drawing water from an upstream reservoir, passing the water through a penstock, in the process, utilizing the force of gravity to rotate the turbines which in turn rotate the generators that generate electricity for sale to NPC.[13]

In BIR Ruling DA-176-2000 dated March 17, 2006, the BIR confirmed that "the billings of CBK, an entity engaged in hydropower generation, to NPC for the sale of electricity generated through hydropower are subject to VAT at zero percent (0%) under Section 108(B)(7) of R.A. 9337. Accordingly, CBK need not apply for any prior approval or confirmation with the BIR as required under Section 4.108-6 of Revenue Regulations No. 16-2005."[14]

On November 26, 2010, petitioner filed with the BIR Revenue District Office No. 55 of Laguna, its ₱17,784,968.91 administrative claim for unutilized input taxes on local purchases and importations of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, including unutilized amortized input taxes on capital goods covering the period from January 1, 2009 to March 31, 2009.[15]

On February 24, 2011, petitioner filed with the BIR Large Taxpayers Service, Revenue District Office No. 121, BIR National Office Building, Agham Road, Diliman, Quezon City, its ₱31,680,290.87 administrative claim for unutilized input taxes on its local purchases and importations of goods other than capital goods, local purchases of services, including unutilized amortized input taxes on capital goods covering the period from April 1, 2009 to June 30, 2009.[16]

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[12] BIR Ruling No. DA-146-2006 dated March 17, 2006, Exhibit "J", Division Docket (8246), Vol. 2, p. 1434.
[13] BIR Ruling No. DA-146-2006 dated March 17, 2006, Exhibit "J", Division Docket (8246), Vol. 2, pp. 1434-1435.
[14] Exhibit "J", Division Docket (8246), Vol. 2, pp. 1434-1435.
[15] Amended Decision, *Rollo*, p. 30
[16] *Id.*

Antecedent Proceedings

On March 30, 2011, due to the CIR's inaction, CBK filed a Petition for Review, docketed as CTA Case No. 8246, covering its ₱17,784,968.91 claim for the period from January 1, 2009 to March 31, 2009 (1st Quarter).[17]

On June 27, 2011, respondent filed her Answer in CTA Case No. 8246, interposing the following Special and Affirmative Defenses:[18]

- CBK is not entitled to the refund because it failed to submit all the necessary and relevant documents pertaining to the administrative claim;

- In accordance with *Ang Tibay v. Court of Industrial Relations* (GR No. L-46496), which enumerated the requisites of a valid administrative proceeding, CBK is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. CBK, however, failed to submit any evidence to support its claim; and,

- In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim.

On June 28, 2011, due to the CIR's inaction, CBK filed a Petition for Review, docketed as CTA Case No. 8302, covering its ₱31,680,290.87 claim for the period from April 1, 2009 to June 30, 2009 (2nd Quarter).[19]

The pre-trial conference for CTA Case No. 8246 was set on July 21, 2011.

On September 2, 2011, after being granted several extensions, the CIR filed his Answer in CTA Case No. 8302 and alleged the following defenses:[20]

- CBK failed to comply with the requirements found in Sections 112(A), (B) and (C) of the National Internal Revenue Code of 1997 (NIRC);

- CBK must also prove that it has complied with the invoicing requirements of Sections 110 and 113 of the NIRC;

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[17] *Id.* at p. 31.
[18] Answer, Division Docket (8246), Vol. 1, pp. 69-72.
[19] Division Docket (8302), pp. 1-15.
[20] Answer, Division Docket (8302), pp. 62-66.

- In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim.

The pre-trial conference for CTA Case No. 8302 was set on September 29, 2011.[21]

On September 14, 2011, CBK moved for the consolidation of the two refund cases.[22]

On October 14, 2011, the Court ordered the consolidation of CTA Case No. 8302 with CTA Case No. 8246, pursuant to Section 1 of Rule 31 of the 1997 Rules of Civil Procedure and reset the pre-trial conference of the consolidated cases to November 3, 2011.[23]

On December 1, 2011, for failure of respondent to appear during Pre-Trial, and upon motion of petitioner, the Court declared the former as in default and allowed the latter to present its evidence *ex-parte*. The same was confirmed in a Resolution dated December 23, 2011.[24]

On January 6, 2012, the CIR filed a Motion to Lift Order of Default, which was denied by the Court on April 19, 2012. Thereafter, respondent filed a Motion for Reconsideration, which was also denied by the Court in a Resolution dated June 13, 2012.[25]

On August 17, 2012, the CIR filed a Petition for *Certiorari* before the Supreme Court, docketed as G.R. Nos. 203054-55, entitled "*Commissioner of Internal Revenue v. Court of Tax Appeals and CBK Power Company, Limited*", praying that the Court's Resolutions dated December 23, 2011, April 19, 2012, and June 13, 2012, be nullified and set aside.[26]

Meanwhile, in view of the Court *a quo*'s denial of his Motion for Reconsideration, CBK was allowed to present its evidence *ex parte*. Thus, it presented the following witnesses: (1) petitioner's Chief Financial Officer Mr. Fernando J. Dela Paz on July 31, 2012 (Mr. Dela Paz); (2) petitioner's Accounting Manager Mr. Joey L. Polintan (Mr. Polintan) on August 30, 2012; and, (3) the Court-commissioned Independent Certified Public Accountant (ICPA) Ms. Myra Celeste O. Dabalos (ICPA Dabalos) on January 31, 2013.[27]

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[21] Division Docket (8302), p. 69.
[22] Division Docket (8302), pp. 70-72.
[23] October 14, 2011 Resolution, Division Docket (8302), pp. 81-82.
[24] June 10, 2014 Decision, Division Docket (8246), Vol. 3, pp. 1822-1823.
[25] Amended Decision, *Rollo*, p. 31.
[26] *Id.*
[27] *Id.* at p. 32.

On October 11, 2012, the Supreme Court issued a Resolution requiring the CTA and CBK (respondents in G.R. Nos. 203054-55) to file their comments on the Petition for *Certiorari* filed by the CIR.[28]

On December 7, 2012, CBK filed its Comment on/Opposition to the CIR's Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Court Dated August 15, 2012.[29]

On April 8, 2013, CBK filed a Motion for Leave of Court to File Attached Amended Petition for Review for CTA Case No. 8302, entitled, "*CBK Power Company Limited vs. Commissioner of Internal Revenue*", which was granted by the trial court on May 2, 2013.[30]

On May 2, 2013, the Court granted CBK's Motion for Leave of Court to File Attached Amended Petition for Review for CTA Case No. 8302. Accordingly, the Amended Petition for Review was admitted by the Court.[31]

In the Amended Petition for Review for CTA Case No. 8302, CBK sought the reduced amount of ₱5,781,915.24 for unutilized input taxes on its importations of goods other than capital goods for the period covering April 1, 2009 to June 30, 2009, taking into consideration the Letter dated February 19, 2013 issued by the CIR.[32]

On June 11, 2013, the Court submitted the consolidated cases for decision.[33]

On June 10, 2014, the Court *a quo* promulgated a Decision partially granting the refund the dispositive portion of which read as follows:

> "**WHEREFORE**, the consolidated Petition for Review and Amended Petition for Review are hereby **PARTLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **ISSUE** a **TAX CREDIT CERTIFICATE**, in favor of petitioner, in the reduced amount of ₱22,126,419.93, representing unutilized input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the first (1st) and second (2nd) quarters of 2009.
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> **SO ORDERED.**"[34]

On July 17, 2014, the CIR filed a Motion for Partial Reconsideration (Re: Decision promulgated 10 June 2014). Thereafter, on August 29, 2014,

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[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] June 10, 2014 Decision, Division Docket (8246), Vol. 3, p. 1823; penned by Associate Justice Lovell R. Bautista with the concurrence of Associate Justice Amelia R. Cotangco-Manalastas.
[32] *Id.*
[33] *Id.*
[34] *Id.* at p. 1839.

CBK filed a Comment on the Motion for Partial Reconsideration (Re: Decision promulgated 10 June 2014) with the Court *a quo*.[35]

On September 8, 2014, the Court resolved to deny for lack of merit CBK's Motion for Reconsideration.[36]

On September 25, 2014, the CIR filed with the Court *En Banc* a Motion for Extension of Time to File Petition for Review, which was granted in a Minute Resolution dated September 29, 2014.[37]

On October 13, 2014, the CIR then filed a Petition for Review *Ad Cautelam* with the Court *En Banc* docketed as CTA EB No. 1225. Thereafter, the Court *En Banc* issued an October 28, 2014 order for CBK to file its comment, to which it failed to comply per Records Verification Report issued on December 3, 2014.[38]

On January 7, 2015, the Court *En Banc*, in CTA EB No. 1225, resolved to give due course to the Petition for Review and required the parties to file their respective memoranda.[39]

On April 16, 2015, with the filing of CBK's Memorandum on February 20, 2015 and the issuance of a Records Verification Report dated March 24, 2015 stating that the CIR failed to file his Memorandum, CTA EB No. 1225 was deemed submitted for decision.[40] This was later recalled by the Court *En Banc* on September 16, 2015, in view of the previous transmittal of the entire records of the case to the Supreme Court. Such transmittal was noted in Supreme Court Resolution dated November 10, 2014.[41]

On July 29, 2015, the Supreme Court promulgated a Decision granting the CIR's Petition for *Certiorari*, setting aside the Court *a quo*'s Resolutions dated December 23, 2011, April 19, 2012 and June 13, 2012. The dispositive portion of the Supreme Court Decision reads as follows:

> "**WHEREFORE**, the petition for *certiorari* is **GRANTED**. The Resolutions dated December 23, 2011, April 19, 2012 and June 13, 2012 issued by the Court of Tax Appeals in CTA Case Nos. 8246 and 8302 are hereby **SET ASIDE**. The consolidated cases are hereby **REMANDED** to the CTA Third Division to give [respondent] the chance to present evidence, rebuttal and sur rebuttal evidence, if needed.
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> **SO ORDERED**."[42]

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[35] Amended Decision, *Rollo*, p. 33.
[36] *Id.*
[37] *Id.*
[38] *Id.* at p. 34.
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*

On August 13, 2015, the Supreme Court's Third Division issued a Notice of Judgment. Subsequently, an Entry of Judgment was issued on December 15, 2015.[43]

On September 17, 2015, CBK filed a Motion to Withdraw Amended Petition for Review (docketed as CTA Case No. 8302) due to the issuance by the Bureau of Customs (BOC) of a TCC with Serial No. 001059 for the amount ₱40,808,627.00, representing the refund of unutilized input taxes on importations of goods other than capital goods for the period April 1, 2009 to December 31, 2009.[44]

Meanwhile in CTA EB No. 1225, the Court *En Banc* issued a February 16, 2016 Resolution, which dismissed *without prejudice* the CIR's Petition for Review *Ad Cautelam* and remanded the case to the CTA Third Division for its proper disposition. This later became final and executory and was entered in the Book of Entries of Judgments on March 18, 2016.[45]

In a Resolution dated February 15, 2017, the Court *a quo* granted CBK's Motion to Withdraw Amended Petition for Review (CTA Case No. 8302), considered CTA Case No. 8302 closed and terminated and set the initial presentation of evidence for the CIR in CTA Case No. 8246 on May 2, 2017.[46]

During the May 2, 2017 hearing, because counsel for the CIR manifested that the case was just recently assigned to him, the Court *a quo*, thus, reset the initial presentation of evidence to July 3, 2017.[47]

However, during the July 3, 2017 hearing, the CIR's counsel manifested that he has no evidence to present, since the assigned Revenue Officer submitted no report of investigation to him. The Court then granted the parties thirty (30) days to submit their memoranda.[48]

With the filing of CBK's Memorandum on July 20, 2017 and the CIR's Memorandum on August 17, 2017, after an extension, the Court *a quo* submitted the case for decision on August 23, 2017.[49]

Accordingly, on February 2, 2018, the Court *a quo* promulgated the Amended Decision which affirmed with modification the June 10, 2014 Decision and the September 8, 2014 Resolution.[50]

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[43] *Id.* at p. 35.
[44] *Id.*
[45] *Id.*
[46] *Id.* at pp. 35-36.
[47] *Id.* at p. 36.
[48] Minutes of July 3, 2017 Hearing, Docket (8246), Vol. 4, p. 1853.
[49] *Id.*
[50] *Id.* at p. 43.

On May 4, 2018, Court *a quo* denied the Motion for Reconsideration of the CIR for lack of merit.[51]

CTA En Banc Proceedings

On May 24, 2018, the CIR filed a Motion for Extension of Time To file Petition for Review and prayed for an extension of fifteen (15) days from May 24, 2018, or until June 8, 2018, within which to file the petition.[52]

The Court *En Banc*, in a Minute Resolution dated May 28, 2018, granted herein petitioner CIR a final and non-extendible period of fifteen (15) days from May 24, 2018, or until June 8, 2018, within which to file his Petition for Review.[53]

Accordingly, on June 8, 2018, the CIR filed the instant Petition for Review.[54]

In an August 1, 2018 Resolution, the Court *En Banc* ordered the parties to file their memoranda.[55]

On August 16, 2018, petitioner CIR filed a Motion for Voluntary Inhibition praying that the Justices of the CTA Third Division voluntarily disqualify or inhibited themselves from deciding the case.[56]

On August 17, 2018, respondent CBK filed its Memorandum.[57]

In a September 5, 2018 Resolution, the Court *En Banc* referred the CIR's Motion for Voluntary Inhibition to the Justices of the CTA Third Division for appropriate action and noted CBK's filing of its Memorandum.[58]

On September 7, 2018, the CIR filed a Motion to Defer Filing of Petitioner's Memorandum, which was denied in a September 24, 2018 Resolution. The Court *En Banc*, however, granted the CIR ten (10) days to file his Memorandum.[59]

On September 26, 2018, petitioner CIR filed his Memorandum.[60]

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[51] *Rollo*, pp. 45-51.
[52] *Rollo*, pp. 1-3.
[53] *Id.* at p. 5.
[54] *Rollo*, pp. 6-22.
[55] *Rollo*, pp. 88-89.
[56] *Rollo*, pp. 90-99.
[57] *Rollo*, pp. 101-115.
[58] *Rollo*, pp. 119-120.
[59] *Rollo*, pp. 121-123, 126-127.
[60] *Rollo*, pp. 128-150.

In a January 11, 2019 Resolution, the Court *En Banc* submitted the case for decision.[61]

THE ISSUES

In assailing the February 2, 2018 Amended Decision and the May 4, 2018 Resolution, the petitioner CIR raised two related grounds for his petition:[62]

1. Respondent CBK is not entitled to a refund or issuance of tax credit certificate in the aggregate amount of ₱17,784,968.91 representing unutilized input VAT for the period January 1, 2009 to March 31, 2009 pursuant to Republic Act No. 9513; and,

2. The Court *a quo* erred in ruling that the alleged input VAT paid by respondent CBK are attributable to zero-rate or effectively zero-rated sales.

THIS COURT'S RULING

We resolve to deny the petition and uphold the assailed decision of the CTA Third Division.

Petitioner anchors his appeal on the legal ground that under Section 15 of R.A. 9513, Renewable Energy Act of 2008, respondent CBK's purchases of local supply goods and services are VAT zero-rated and, thus, since there was no input VAT to be paid, it was not entitled to a refund of said input VAT from said purchases which are attributed to its VAT zero-rated sales of electricity to NPC.[63] Furthermore, since CBK is not liable to pay the input VAT on said purchases, it is not the proper party to claim the refund of the input VAT on those purchases in accordance with the holding in *Contex Corporation v. Commissioner of Internal Revenue*[64] and *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*.[65] Finally, it is contended that the Court *a quo* failed to discuss the determination on whether the input VAT allegedly paid by CBK is attributable to zero-rated sales.[66]

Respondent CBK, on the other hand, merely stated that the Court *a quo* correctly ruled when it partly granted the claim and ordered petitioner CIR to issue a tax credit certificate in the amount of ₱16,403,190.69.[67]

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[61] *Rollo*, pp. 162-163.
[62] Petition for Review, *Rollo*, p. 18.
[63] Memorandum, *Rollo*, pp. 133-136.
[64] G.R. No. 151135, July 2, 2004.
[65] G.R. No. 190506, June 13, 2016.
[66] Petition for Review, *Rollo*, pp. 17-20.
[67] Respondent's Comment on Petitioner's Petition for Review dated June 5, 2018, *Rollo*, pp. 78-84.

Petitioner's arguments fail to convince this Court.

First, the petitioner CIR argues that the tax incentive provision of R.A. 9513, or the Renewable Energy Act of 2008, operates to bar CBK from claiming refund of its input VAT because the law provides for zero-rating of its purchases from local suppliers, thus:

"CHAPTER VII

GENERAL INCENTIVES

Section 15. ***Incentives for Renewable Energy Projects and Activities.*** - RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

(a) Income Tax Holiday (ITH) - For the first seven (7) years of its commercial operations, the duly registered RE developer shall be exempt from income taxes levied by the national government.

Additional investments in the project shall be entitled to additional income tax exemption on the income attributable to the investment: *Provided*, That the discovery and development of new RE resource shall be treated as a new investment and shall therefore be entitled to a fresh package of incentives: *Provided, further*, That the entitlement period for additional investments shall not be more than three (3) times the period of the initial availment of the ITH.

(b) Duty-free Importation of RE Machinery, Equipment and Materials - Within the first ten (10) years upon the issuance of a certification of an RE developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties: *Provided, however*, That the said machinery, equipment, materials and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: *Provided, further*, That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials and parts are made.

Endorsement of the DOE must be secured before any sale, transfer or disposition of the imported capital equipment, machinery or spare parts is made: *Provided*, That if such sale, transfer or disposition is made within the ten (10)-year period from the date of importation, any of the following conditions must be present:

(i) If made to another RE developer enjoying tax and duty exemption on imported capital equipment; *ge*

(ii) If made to a non-RE developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;

(iii) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and

(iv) For reasons of proven technical obsolescence.

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer or disposition shall no longer be subject to the payment of taxes and duties;

(c) Special Realty Tax Rates on Equipment and Machinery. - Any law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery, and other improvements of a Registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: *Provided*, That in case of an integrated resource development and generation facility as provided under Republic Act No. 9136, the real property tax shall only be imposed on the power plant;

(d) Net Operating Loss Carry-Over (NOLCO). - The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss: *Provided, however*, That operating loss resulting from the availment of incentives provided for in this Act shall not be entitled to NOLCO;

(e) Corporate Tax Rate. - After seven (7) years of income tax holiday, all RE Developers shall pay a corporate tax of ten percent (10%) on its net taxable income as defined in the National Internal Revenue Code of 1997, as amended by Republic Act No. 9337. *Provided*, That the RE Developer shall pass on the savings to the end-users in the form of lower power rates.

(f) Accelerated Depreciation. - If, and only if, an RE project fails to receive an ITH before full operation, it may apply for Accelerated Depreciation in its tax books and be taxed based on such: *Provided*, That if it applies for Accelerated Depreciation, the project or its expansions shall no longer be eligible for an ITH. Accelerated depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE resources may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of the Department of Finance and the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Any of the following methods of accelerated depreciation may be adopted:

i) Declining balance method; and

ii) Sum-of-the years digit method

(g) Zero Percent Value-Added Tax Rate. - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.

(h) Cash Incentive of Renewable Energy Developers for Missionary Electrification. - A renewable energy developer, established after the effectivity of this Act, shall be entitled to a cash generation-based incentive per kilowatt hour rate generated, equivalent to fifty percent (50%) of the universal charge for power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for missionary electrification;

(i) Tax Exemption of Carbon Credits. - All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes;

(j) Tax Credit on Domestic Capital Equipment and Services. - A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and custom duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer for purposes set forth in this Act: *Provided*, That prior approval by the DOE was obtained by the local manufacturer: *Provided, further*, That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE operating contract." (Underscoring supplied)

This argument, however, is an *incomplete* appreciation of the law which leads, therefore, to an incorrect application thereof.

In opposing the refund claim of CBK, the counsels for petitioner CIR focused *solely* on Section 15 of R.A. 9513 on the fiscal incentives granted to renewable energy developers but *overlooked* the other provisions of the law, *i.e.* Sections 25 and 26. These provisions specifically require that the taxpayer or renewable energy developer should, as a condition for availment of the

fiscal incentives, register with the Department of Energy (DOE) and secure a certification from the Renewable Energy Management Bureau (REMB).

It is a basic rule in statutory construction that the particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. Every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.[68]

The texts of Sections 25 and 26 of R.A. 9513 clearly impose the registration and certification requirements before renewable energy developers can avail of the tax incentives therein, *i.e.* VAT zero-rating of their purchases of local supply of goods, properties and services needed for the development, construction and installation of their plant facilities:

> "**Section 25.** ***Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment.*** - RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the Department of Energy, through the Renewable Energy Management Bureau. Upon registration, a certification shall be issued to each RE Developer and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act.
>
> **Section 26.** ***Certification from the Department of Energy.*** - All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy Management Bureau.
>
> The Department of Energy, through the Renewable Energy Management Bureau shall issue said certification fifteen (15) days upon request of the renewable energy developer or manufacturer, fabricator or supplier.
>
> *Provided,* That the certification issued by the Department of Energy shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned." (*Underscoring supplied*)

A careful review of the evidence on record will show that respondent CBK was issued Certificates of Compliance (COCs) by the Energy Regulatory Commission (ERC) as a Generation Company under R.A. 9136 or

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[68] *Nixon T. Kua v. Robert Dean S. Barbers*, G.R. No. 159410, January 28, 2008.

the Electric Power Industry Reform Act,[69] *not* under R.A. 9513. More importantly, there is *nothing* on record that will prove that CBK was registered as a renewable energy developer with the DOE, or that it was issued a certificate by the REMB and, thus, was deemed qualified for the Section 15 fiscal incentives in relation to Sections 25 and 26 of R.A. 9513.

To reiterate, the law on renewable energy in R.A. 9513 is clear. Before the renewable energy developers can avail of the fiscal incentives, they must *first* qualify under a certification process administered by the REMB. In other words, unless the petitioner has established by evidence that CBK is a renewable energy developer registered with the DOE and certified by REMB, CBK cannot be said to have availed of the fiscal incentives granted in R.A. 9513 in CY 2009. The Court notes that during trial of the case below, petitioner CIR was given an opportunity by the Supreme Court to present evidence to oppose the refund claim of CBK, but opted to forego said opportunity.[70]

Bare allegations will not suffice without proof.[71] It is hornbook doctrine that mere allegations do not constitute proof. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[72] Consequently, petitioner's *unproven* conclusion that CBK's "purchases of local supply of goods, properties and services for the development, construction and installation of its plant facilities"[73] are VAT zero-rated is *not* premised on facts. Such argument must *fail*.

Accordingly, the holdings in *Contex Corporation v. Commissioner of Internal Revenue*[74] and *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue,*[75] which the CIR premised on *unfounded* allegations, do not apply in this case.

In the *Coral Bay*, on the one hand, the Supreme Court found that the taxpayer is a domestic corporation registered with Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise whose purchases were subject to zero-percent VAT under Revenue Memorandum Circular No. 74-99 consistent with the Cross Border Doctrine and the Destination Principle of the Philippine VAT System. The Supreme Court held, therefore, that the taxpayer was *not* entitled to file a claim for refund of input VAT:

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[69] Exhibits "F", "G", "H" and "I", Division Docket, Vol. 2, pp. 1429-1432.
[70] During the July 3, 2017 hearing, the CIR's counsel manifested that he has no evidence to present, since the assigned Revenue Officer submitted no report of investigation to him. Please see Minutes of July 3, 2017 Hearing, Docket (8246), Vol. 4, p. 1853.
[71] *Ma. Ana Consuelo A.S. Madrigal v. Department of Justice, et al.*, G.R. No. 168903, June 18, 2014.
[72] *Government Service Insurance System v. Prudential Guarantee and Assurance, Inc., et al.*, G.R. No. 165585, November 20, 2013.
[73] Section 15(g), R.A. 9513.
[74] G.R. No. 151135, July 2, 2004.
[75] G.R. No. 190506, June 13, 2016.

> "The petitioner's principal office was located in Barangay Rio Tuba, Bataraza, Palawan. Its plant site was specifically located inside the Rio Tuba Export Processing Zone - a special economic zone (ECOZONE) created by Proclamation No. 304, Series of 2002, in relation to Republic Act No. 7916. As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT following RMC No. 42-03, which provides:
>
> > 'In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.'
>
> In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier." (*Underscoring supplied and citations omitted*)

In *Contex*, on the other hand, the taxpayer was a domestic corporation registered with the Subic Bay Metropolitan Authority (SBMA) as a Subic Bay Freeport Enterprise, registered as a *Non-VAT taxpayer* and whose purchases were considered *VAT-exempt*. As such, the Supreme Court concluded that it is not entitled to refund the input VAT erroneously passed on to it by its suppliers:

> "On the second issue, it may not be amiss to re-emphasize that the petitioner is registered as a NON-VAT taxpayer and thus, is exempt from VAT. As an exempt VAT taxpayer, it is not allowed any tax credit on VAT (input tax) previously paid. In fine, even if we are to assume that exemption from the burden of VAT on petitioner's purchases did exist, petitioner is still not entitled to any tax credit or refund on the input tax previously paid as petitioner is an exempt VAT taxpayer.
>
> Rather, it is the petitioner's suppliers who are the proper parties to claim the tax credit and accordingly refund the petitioner of the VAT erroneously passed on to the latter.
>
> Accordingly, we find that the Court of Appeals did not commit any reversible error of law in holding that petitioner's VAT exemption under Rep. Act No. 7227 is limited to the VAT on which it is directly liable as a seller and hence, it cannot claim any refund or exemption for any input VAT

> it paid, if any, on its purchases of raw materials and supplies." (*Underscoring supplied*)

As discussed above, CBK is a VAT-registered taxpayer[76] whose purchases were neither VAT-exempt nor VAT zero-rated but were subject to 12% VAT and were found *duly* substantiated by the trial court. Clearly the facts of the *Contex* and *Coral Bay* relied upon by the CIR are not on all fours with those of this case.

Second, it is not disputed that the sales of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels are regarded as VAT zero-rated transactions in accordance with Section 108(B)(7) of the NIRC, as amended:

> "**SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."

In addition, Section 4.108-3(f) of Revenue Regulations No. (RR) 16-2005 states:

> "SECTION 4.108-3. Definitions and Specific Rules on Selected Services. —
>
> xxx xxx xxx
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts: *Provided*, That sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.

[76] BIR Certificate of Registration, Exhibit "M", Division Docket (8246), Vol. 2, p. 1456.

'**Generation companies**' refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the R.A. No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities." (*Underscoring supplied*)

Finally, in its Ruling No DA-146-2000 dated March 17, 2006 issued to CBK, the CIR unequivocally confirmed that CBK's sale of electricity to NPC is VAT zero-rated, thus:

"xxx xxx xxx

From the foregoing circumstances, there is no dispute that CBK is primarily organized to engage in power generation business, specifically in hydropower generation, i.e., generating/supplying electric power generated through hydropower, a renewable source of energy. This is fortified by the Certificate of Compliance issued by the Energy Regulatory Commission (ERC) that CBK is indeed a hydropower generation company. Thus, the billings of CBK for its sale of electricity to NPC, designated under the BROT Agreement as Capital Recovery Fees and O&M Fees, are subject to zero percent (0%) VAT.

Comparatively, in BIR VAT Ruling No. 052-99 dated May 19, 1999, this Office ruled that —

> 'Accordingly, please be informed that, based on the said ruling, the supply of electricity by HOPEWELL PHILS., to the NPC, shall be subject to the zero percent (0%) VAT, pursuant to Section 108(B)(3) of the National Internal Revenue Code of 1997.
>
> It shall be understood, however, that your client, HOPEWELL PHILS., shall apply with the Revenue District Office giving jurisdiction over its principal place of business for the effective VAT zero rating of its sale of electricity to the NPC, pursuant to the provisions of Revenue Regulations No. 7-95. Without an approved application for zero rating, the transaction otherwise entitled to zero percent (0%) VAT shall only be considered exempt from the VAT.'

It is noteworthy that while the aforesaid ruling is anchored on Section 108(B)(3) of the Tax Code of 1997 which is premised on NPC's exemption from direct and indirect taxes, this Office takes cognizant of the rule that the said exemption had already been expressly repealed, notably under Section 24(A) of R.A. No. 9337 insofar as VAT is concerned. However, this Office cannot close its eyes that the sale/supply of electricity by CBK to NPC continues to be zero-rated under Section 108(B)(7) of R.A. No. 9337. Accordingly, payments received by CBK for the sale or supply of electricity to NPC shall be subject to 0% VAT.

> Moreover, Section 4.108-5(b)(7) of Revenue Regulations No. 16-2005 provides that the sale of power or fuel generation through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent 0% VAT rate.
>
> From the above-cited regulations, it is immediately clear that the requirement for prior approval or confirmation for effective zero-rating therefore applies only to those services specifically identified as "effectively zero-rated" under subparagraph (b) nos. (3), (4) and (5) of Section 4.108-5. Conversely, subparagraphs (1), (2), (6) and (7) of Section 4.108-5 are therefore considered zero-rated which do not require prior approval or confirmation with the BIR.
>
> WHEREFORE, in view of the foregoing, this Office holds that the billings of CBK, an entity engaged in hydropower generation, to NPC for the sale of electricity generated through hydropower are subject to VAT at zero percent (0%) under Section 108(B)(7) of R.A. 9337. Accordingly, CBK need not apply for any prior approval or confirmation with the BIR as required under Section 4.108-6 of Revenue Regulations No. 16-2005." (*Underscoring supplied*)

Clearly, on the basis of the foregoing, the sale of power generated through renewable sources of energy by CBK is subject to zero percent (0%) VAT.

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[77] and its VAT invoices and official receipts issued to NPC,[78] which were verified in the ICPA report,[79] 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.[80] Accordingly, the Court *a quo* was justified in adopting the same conclusion in its June 10, 2014 Decision:[81]

> "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

[77] Exhibit "BB-1" / "BB-1-001" to "BB-1-006", Formal Offer of Evidence -Second Part, Division Docket, Vol. 3, pp. 1473-1474.
[78] Exhibits "II-00001" to "II-00214", "MM", "MM-0001" to "MM-0146" and "OO", Formal Offer of Evidence -Second Part, Division Docket, Vol. 3, pp. 1493-1494.
[79] Exhibit AA, Division Docket, Vol. 1, p. 734-790.
[80] Exhibit AA, Division Docket, Vol. 1, p. 742.
[81] Division Docket, Vol. 3, p. 1831.

the amount of P1,949,421,902.14 which was reflected in its Quarterly VAT Returns, as follows:

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.[82] The CIR, however, opted not to present any evidence to contest the instant claim.

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:

"Then next to the third requisite — *that input taxes were incurred or paid* — petitioner reflected in its Quarterly VAT Returns for the first (1st) and second (2nd) quarters of 2009 its claimed input taxes in the amount of P23,566,884.15, broken down as follows:

Exhibit	Period	Input VAT
'BB-1-002a'	1st Quarter	₱17,784,968.91
'BB-2-002a'	2nd Quarter	5,781,915.24
	Total	**₱23,566,884.15**

[82] *Winebrenner and Inigo Insurance Brokers, Inc. v. CIR*, G.R. No. 206526, January 28, 2015.

To prove that it has incurred/paid the aforesaid input VAT, petitioner submitted various 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 Independent Certified Public Accountant ('CPA'), Ms. Myra Celeste O. Dabalos.

Upon scrutiny of the Independent CPA's Report and the related supporting documents, the Court finds that the input taxes in the amount of ₱702,904.61 should be disallowed for non-compliance with the substantiation requirements under Sections 110 (A) and 113(A) and (B) of the 1997 NIRC, as amended, in relation to Sections 4.110-2, 4.110-3, 4.110-8, 47 and 4.113-1 48 of Revenue Regulations No. 16-05. Below is the detailed breakdown of the disallowed input VAT of ₱702,904.61:

xxx xxx xxx

In addition, the claimed input VAT in the amount of P737,559.61, as detailed below, should be disallowed for non-compliance with the substantiation requirements under the VAT law and regulations:

xxx xxx xxx

Thus, from the total input VAT claim in the amount of ₱23,566,884.15, only the amount of ₱22,126,419.93, as computed below, has been duly substantiated:

Claimed Input VAT			₱23,566,884.15
Less:	Disallowances		
	Per CPA Report	₱702,904.61	
	Per Court's further verification	737,559.61	1,440,464.22
Valid Input VAT			₱22,126,419.93

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.

In sum, the Court finds that petitioner is entitled to the reduced amount of ₱22,126,419.93, representing unutilized input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the first (1st) and second (2nd) quarters of 2009."[83] (*Underscoring supplied and citations omitted*)

We agree that "tax refunds or tax credits — just like tax exemptions — are strictly construed against taxpayers, the latter having the burden to prove

[83] June 10, 2014 Decision, Division Docket, Vol. 3, pp. 1831-1839.

strict compliance with the conditions for the grant of the tax refund or credit."[84] "This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim."[85] However, once the taxpayer sufficiently proven its entitlement to a refund, it is incumbent upon the government to refund what the taxpayer is entitled to under the law.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The February 2, 2018 Amended Decision and the May 4, 2018 Resolution are hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[84] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now Team Energy Corporation)*, G.R. No. 180434, January 20, 2016.
[85] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice