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. 9663**

Members:

**CASTAÑEDA, JR.,** *Chairperson, and*
**BACORRO-VILLENA,** ***JJ.***

Promulgated:
MAR 08 2021 4:15 pm

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# RESOLUTION

***BACORRO-VILLENA, J.:***

For the Court's resolution are the following:

1.) "Motion for Reconsideration (Decision Dated October 28, 2020)"[1] filed by petitioner Philippine Geothermal Production Company, Inc. (**petitioner/PGPCI**), without respondent's Commissioner of Internal Revenue's (**respondent/CIR**) comment; and,

2.) "Motion for Partial Reconsideration [re: Decision dated 28 October 2020]"[2] with petitioner's "Comment and Opposition

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[1] Filed on 16 November 2020, Division Docket, Volume V, pp. 2009-2015.
[2] Filed on 16 November 2020, id., pp. 2024-2035.

(to Respondent's Motion for Partial Reconsideration Dated November 11, 2020)"[3].

Both motions seek a reversal of this Court's Decision[4] in the above-captioned case. The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, the foregoing considered, petitioner Philippine Geothermal Production Company, Inc.'s Petition for Review filed on 25 August 2017 is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** or **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of petitioner Philippine Geothermal Production Company, Inc. in the amount of **₱10,029,711.08**, representing its excess and unutilized input VAT attributable to zero-rated sales for the four quarters of CY 2015.
>
> **SO ORDERED.**
>
> ...

In its motion petitioner argues that the Court erred in deducting the amount of ₱3,589,914.20 representing the Bureau of Internal Revenue's (**BIR's**) previous partial approval of petitioner's claim for refund. Respondent in his motion maintains however, that petitioner is *not* entitled in whole to the refund. He argues, among others, that the Court erred when it took the BIR's partial grant of refund as evidence of petitioner's submission of all necessary documents at the administrative level particularly, the Certificate of Endorsement (**COE**) issued by the Department of Energy (**DOE**).

**We resolve.**

In its Petition for Review, petitioner originally claimed the refund of the aggregate amount of ₱24,548,041.82. After a review of the evidence submitted at trial, the Court found that petitioner was only entitled to a refund of excess input Value-Added Tax (**VAT**) attributable to valid zero-rated sales in the amount of ₱13,619,625.28. However, as will be recalled, the BIR issued a letter[5] to the Commissioner of the Bureau of Customs (**BOC**) informing the latter of

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[3] Filed on 25 November 2020, id., pp. 2018-2023.
[4] Promulgated on 28 October 2020, id., pp. 1985-2008.
[5] Exhibit "P-26", BIR Records.

the grant and allowance of petitioner's claim up to the amount of ₱3,589,914.20 only. Attached to the letter was the Authority to Issue VAT/Credit Refund authorizing the OIC-Assistant Commissioner of the Large Taxpayers Service to issue the tax credit certificate (**TCC**) for the period of 01 January 2015 to 31 December 2015. Due to this previous grant of refund, the Court deducted the amount thereof from ₱13,619,625.28 arriving at the value of ₱10,029,711.08.

To clarify, the grant of refund in the amount of ₱10,029,711.08 made by the Court is in addition to the ₱3,589,914.20 already previously granted by the BIR. The fact is that petitioner already has an Authority to Issue VAT/Credit Refund in the amount of ₱3,589,914.20, whether or not petitioner has decided to claim the same from the BIR is a different matter.

As for respondent, although he raises a meritorious point, a further review of the records of this case reveal that a COE is only required of PGPCI if it wishes to avail of the incentive on duty-free importation of renewable energy (**RE**) machinery, equipment and materials as shown in its Certificate of Registration[6] (**COR**) issued by the Board of Investments (**BOI**), to wit:

> ...
>
> **SPECIFIC TERMS AND CONDITIONS**
>
> ...
>
> 4. The enterprise may avail of the following incentives under the administration of the BOI:
>
> a.) **Duty-free Importation of RE Machinery, Equipment and Materials including control and communication equipment**, within the first ten (10) years from the issuance of the DOE certificate of registration.
>
> The enterprise shall secure from the DOE-REMB a Certificate of Endorsement that the enterprise is in good standing for availment of this incentive. The Endorsement shall be on a per transaction basis. "Per transaction" means per application of incentives.
>
> ...

6 Exhibit "P-12", Division Docket, Vol. IV, pp. 1280-1282.

The same condition however is not imposed on its enjoyment of a zero-rated VAT rate. As regards this matter, the same COR only provides:

> ...
> e) Zero-Percent Value-Added Tax Rate
>
> The sale of power generated by the enterprise as well as its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and the whole process of exploration and development of RE sources up to its conversion into power shall be subject to zero percent value-added tax pursuant to the NIRC.[7]
> ...

As a matter of fact, this limitation on the requirement of a COE is supported by Republic Act (**R.A.**) 9513[8], Section 15 of which provides:

> ...
>
> **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:
>
> ...
>
> (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**

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7 *Id.*

8 AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES otherwise known as "The Renewable Energy Act of 2008" (16 December 2008)

**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;

(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[.][9]

...

Similar to the terms and conditions of the BOI's COR, the aforementioned law does not require the DOE's endorsement in order that an RE developer to enjoy a zero-rated VAT rate. RA 9513 merely provides, thus:

...

(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.[10]

...

[9] Emphasis supplied.

[10] *Id.*

Therefore, it would appear that despite Our previous opinions in the Assailed Decision, PGPCI would still be able to avail a zero percent VAT rate regardless of its procurement of the COE.

**WHEREFORE**, the foregoing considered, petitioner's "Motion for Reconsideration (Decision Dated October 28, 2020)" filed on 16 November 2020 and respondent's "Motion for Partial Reconsideration [re: Decision dated 28 October 2020]" filed on 16 November 2020, are both **DENIED** for lack of merit.

**SO ORDERED.**

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

**I CONCUR:**

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