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

**FIRST DIVISION**
*********

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| **HEDCOR, INC.,** Petitioner, | **CTA Case No. 8875** |
| | ***Members:*** |
| **- versus -** | **DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ. |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | ***Promulgated:*** JUL 11 2017 2:58 pm |

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# DECISION

**UY, J.:**

This is a Petition for Review[1] filed on August 20, 2014 by Hedcor, Inc. seeking the refund or the issuance of tax credit certificate (TCC) in the aggregate amount of ₱10,283,416.31, allegedly representing its excess and unutilized input value-added tax (VAT) arising from its domestic purchases of goods and/or services attributable to its zero-rated sales for the first quarter of calendar year (CY) 2012.

## THE FACTS

Petitioner Hedcor, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at 214 Ambuclao Road, Obulan, Beckel, La Trinidad, Benguet.[2] It is primarily engaged in the business of owning, developing, constructing, operating, repairing and maintaining of hydro-electric power plant systems, renewable and indigenous power generation

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[1] Docket, pp. 6 to 16.
[2] Exhibit "P-1", Docket, p. 320.

plants and other types of power generation and/or converting stations, and acts as a holding company or joint venture partners or investors in the business of developing, operating and/or owning power generation plants and/or converting stations.[3]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Taxpayer Identification Number (TIN) 001-946-873-000.[4] It was issued BIR Certificate of Registration No. OCN 4RC0000670842 dated May 2, 1990 by the BIR Revenue District Office (RDO) No. 9.[5]

On the other hand, respondent Commissioner of Internal Revenue is the duly appointed Chief of the BIR, and is vested by law with power to decide, approve and grant refund of internal revenue taxes or issue tax credit certificates of input tax due or paid by a VAT-registered person, whose sales are zero-rated or effectively zero-rated, as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[6]

Petitioner filed its amended Quarterly VAT Return for the first quarter of CY 2012 on May 10, 2012.[7] On March 24, 2014, petitioner filed an administrative claim for refund or issuance of TCC in the aggregate amount of ₱10,283,416.31,[8] allegedly representing its excess and unutilized input VAT for the first quarter of CY 2012, together with its supporting documents,[9] with BIR RDO No. 9.

Due to respondent's inaction, petitioner filed the present *Petition for Review* on August 20, 2014.

Respondent thereafter filed his *Answer* on November 17, 2014,[10] interposing the following Special and Affirmative Defenses, to wit:

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[3] Exhibit "P-1", Docket, p. 318.
[4] Par. 2, Summary of Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 229.
[5] Exhibit "P-14", Docket, p. 374; Refer also to Par. 3, Summary of Stipulated Facts, JSFI, Docket, p. 229.
[6] Summary of Admitted Facts, JSFI, Docket, pp. 228 to 229.
[7] Exhibit "P-15", Docket, p. 375.
[8] Exhibits "P-20" and "P-21", Docket, pp. 381 to 383; Refer also to Par. 4, Summary of Stipulated Facts, JSFI, Docket, p. 229.
[9] Exhibit "P-22", Docket, pp. 384 to 386.
[10] Docket, pp. 97 to 107.

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### "SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent hereby reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

5. Petitioner is not entitled to refund or tax credit in the amount of Php10,283,416.31 representing alleged unutilized input VAT arising from purchases attributable to zero-rated sales of electricity for the first quarter of taxable year 2012.

6. Taxes collected are presumed to be in accordance with laws and regulations.

7. All claims for refund are governed by one same rule: that respondent still has to investigate and ascertain the veracity of the claim. As the Supreme Court stated in one case, 'A corporate taxpayer's option to avail of tax credit does not, however, mean that it is *ipso facto* granted.' Hence, petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.

8. The instant petition is not warranted for lack of jurisdiction as petitioner prematurely elevated this case to the Honorable Court.

9. Section 1 (j) of Rule 16 of the 1999 Rules of Civil Procedure provides a well-settled rule, to wit:

> 'MOTION TO DISMISS'
>
> Section 1. Grounds. – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> x x x
>
> (j) That a condition precedent for filing the claim has not been complied with.'

10. In connection thereto, Section 112 (C) of the Tax Code of 1997 provides as follows:

> '**SEC. 112.** ***Refunds or Tax Credits of Input Tax.***
>
> x x x
>
> **(C)** ***Period Within Which Refund or Tax Credit of Input Taxes Shall be Made.*** - In proper cases, the Commissioner shall **grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsections (A) and (B) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim** or after the expiration of the one hundred twenty day-period, **appeal the decision or the unacted claim with the Court of Tax Appeals**.' (*Emphasis supplied*)

11. As provided in Revenue Memorandum Order (RMO) No. 53-98 dated June 1, 1998, the complete list of documents required by law are as follows:

**VALUE-ADDED TAX**

A. Requirements from the Taxpayers (Annex B)
   1. Proof of claimed tax credits
   2. Proof of Tax Compliance Certificate applied
   3. Xerox Copy of used Tax Credit Certificates (TCC) with annotation of issued TDM at the back, if applicable
   4. Proof of payment of deficiency tax, if any

a) current year/period
b) previous year/period

5. Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable
6. Xerox copies of the Official Receipts evidencing VAT payments on imported purchases, if applicable
7. Proof of exemption under special law, if applicable
8. Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
9. Certificate of Registration issued by the appropriate regulatory agency, together with the condition attached to such registration, if applicable
10. Proof of 'Approval of Effective Zero-Rating of Sales, if applicable
11. Sample invoice/s for Export/Exempt Sales, if applicable
12. Proof that the acceptable foreign currency process on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, if applicable

**VALUE-ADDED TAX**
(For audit involving claim for Refund/ TCC)

A. Requirements from Taxpayer
   I. Requirements mentioned in Annex B
   II. Additional General Requirements
      (1) 3 copies of 'Application for VAT Credit/Refund
      (2) Summary List of Local Purchases specifying the following:

xxx xxx xxx

(3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)

(4) Summary of importation made during the period with the following details:

a. Date of invoice
b. Supplier
c. Item
d. A WB/BL No.
e. Date of Arrival
f. Total Value
g. Date of Payment
h. OR No.
i. VAT

(5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payments of VAT. (Segregate documents paid by cash from those paid by tax debit memo)

(6) VAT Returns filed for the quarter showing that the amount applied for refund/ TCC has been reflected as a deduction from the total available input tax, as well as VAT return for the succeeding quarter.

(7) Certification of taxpayer showing the amount of Zero-rated sales, Taxable Sales and Exempt Sales

(8) A statement showing the amount and description of the sale of goods and services, the name of persons or

entities (except in case of export sales) to whom the goods or services were sold and date of the transactions, where the applicant's zero-rated transactions are regulated by certain government agency

(9) Articles of Incorporation – for first time filers

(10) Sales Contract/Agreement

(11) BOI Certificate of Registration

(12) BIR Certificate of Registration

(13) Certification from BOI, DOF, BOC, PEZA, etc. that subject taxpayer has not filed similar action for refund covering the same period

(14) Sworn statement that ending inventory as of the close of the period covered by the claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter

(15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter

(16) Copy of ITR and Certified Financial Statement, if applicable

(17) Beginning and ending inventory or raw materials, work-in-process. xxx'

III. Additional Specific Requirements

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(1) x x x
(2) For Zero-Rated Sales of Services (contractors, mining, etc)
a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.
b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos.
c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

12. Petitioner claims that it timely filed the instant case. It alleges that the 120-day period within which the Commissioner of Internal Revenue (CIR) should act on the administrative claim for refund or tax credit should be reckoned from 24 March 2014, the alleged date of submission of all its supporting documents pursuant to RMO No. 53-98. Since the 120-day period expires on 22 July 2014, petitioner has 30 days from 22 July 2014 or until 21 August 2014 within which to file a petition for review before this Honorable Court.

13. However, petitioner failed to submit the complete documents to substantiate its administrative claim. Perusal of the Bureau of Internal Revenue (BIR) Records of the case does not show that petitioner fully complied with the documentary requirements with regard to its claim for refund.

14. Section 112 (C) of the Tax Code of 1997 clearly provides that upon respondent's denial of the claim or

inaction which is tantamount to a denial of the said action, only then can the taxpayer resort to judicial remedies. Having failed to submit the required documents to substantiate their administrative claim, it is premature to claim that there was denial by inaction on the part of respondent. Consequently, the Honorable Court is divested of jurisdiction over the instant petition.

15. It must be remembered, that in *Laguna CATV Network, Inc. vs. Hon. Alex E. Maraan, Regional Director, Region IV, DOLE*, the Supreme Court stated that 'a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, **but also pursue it to its appropriate conclusion before seeking judicial intervention** in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.' *(Emphasis supplied)*

16. Alternatively, should the Honorable Court hold that it has jurisdiction, respondent submits that the denial by inaction of the administrative claim for refund was proper in all respect.

17. In 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 for refund. Respondent avers that petitioner failed to establish such right.

18. As discussed above, there is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Contrary to what is provided by law and jurisprudence, particularly the above-mentioned Section 112 (C) of the Tax Code and Revenue Memorandum Order No. 53-98.

19. The law requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue (BIR) before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law.** Hence, petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warranted the denial by inaction of the administrative claim.

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20. Petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warranted the denial by inaction of the administrative claim.

21. In cases such as this, before judicial inquiry into the issue of whether petitioner, in general, is entitled to a refund/tax credit under substantive law may be considered, petitioner has an initial burden to discharge. They must prove that they complied with all the administrative requirements continuing up to judicial review. In other words, before **trial de novo** proceeds and disposes of the issue of refund entitlement under **substantive** law, it must first be proved that there was **procedural** compliance in pursuing the administrative claim leading to the **appellate** proceedings. As stated by the Honorable Supreme Court:

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. **Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of**

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> **<u>the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim</u>**.' *(Emphasis and underscoring supplied)*
>
> 22. So if the denial (by inaction) of the administrative claim is because of non-compliance with legal procedural requirements, then true to its appellate nature, the Honorable Court must sustain the decision of the BIR since it suffers no infirmity. Here, because of petitioner's failure to present the required documents to respondent, respondent correctly denied by inaction the administrative claim. To reiterate, part of petitioner's burden is to prove before the Honorable Court that respondent did not have any reason to deny its claim. It failed to discharge that burden. For all these failures, it is imperative that petitioner's judicial claim for refund must fall.
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> 23. The right of taxation cannot easily be surrendered as taxes are essential to a government's existence. Since tax refunds are in the nature of tax exemptions, these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption.
>
> 24. It is a well-settled principle that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.
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> 25. Evidently, petitioner failed to prove that its right to tax refund indubitably exists. Since taxes collected are presumed to be in accordance with laws and regulations, failure to defeat such presumption is fatal to petitioner's claim."

The case was set for pre-trial conference on February 26, 2015.[11] By agreement of the parties, they subsequently filed their

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[11] Notice of Pre-Trial Conference, Docket, p. 109.

*Joint Stipulation of Facts and Issues* on March 19, 2015,[12] which was approved by the Court in the Resolution dated March 26, 2015.[13] A Pre-Trial Order was issued in accordance thereto on March 31, 2015.[14]

During trial, petitioner presented documentary and testimonial evidence to support its claim. Petitioner presented Arazeli Malapad[15] and Emmanuel Y. Mendoza, the Court-commissioned Independent Certified Public Accountant (CPA), as witnesses.[16]

On the part of respondent, his counsel manifested that he is waiving the presentation of his evidence.[17] On April 20, 2016, respondent filed a *Manifestation*,[18] stating that he is adopting the arguments raised in the *Answer* as his *Memorandum*. On the other hand, petitioner filed its *Memorandum* on June 29, 2016.[19] Correspondingly, this case was considered submitted for decision on July 15, 2016.[20]

Hence, this Decision.

## THE ISSUE

The parties submitted the following issue for the Court's resolution, to wit:

> "Whether petitioner is entitled to a refund or tax credit in the total amount of Ten Million Two Hundred Eighty-Three Thousand Four Hundred Sixteen Pesos and Thirty One Centavos (Php10,283,416.31) allegedly representing unutilized input VAT from purchases attributable to zero-rated sales of electricity for the first quarter of taxable year 2012."[21]

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[12] Docket, pp. 228 to 231.
[13] Docket, pp. 233 to 234.
[14] Docket, pp. 236 to 242.
[15] Minutes of the hearing dated May 19, 2015, Docket, pp. 260 to 263.
[16] Minutes of the hearing dated September 10, 2015, Docket, pp. 292 to 293.
[17] Minutes of the hearing dated September 10, 2015, Docket, pp. 292 to 293.
[18] Docket, pp. 440 to 442.
[19] Docket, pp. 480 to 497.
[20] Resolution dated July 15, 2016, Docket, p. 499.
[21] JSFI, Docket, p. 229.

***Petitioner's arguments:***

Petitioner argues that it filed its judicial claim for excess unutilized input VAT refund within the prescriptive period provided under Section 112(c) of the Tax Code and duly submitted the documents to support its claim, when it filed its administrative claim on March 24, 2014.

Petitioner likewise claims that being a VAT-registered hydropower generation company, whose sales of hydropower are zero-rated for VAT purposes, has legal and factual bases to claim for input VAT refund.

***Respondent's counter-arguments:***

Respondent counter-argues that petitioner is not entitled to refund or tax credit in the amount of ₱10,283,416.31, representing alleged unutilized input VAT arising from purchases attributable to zero-rated sales of electricity for the first quarter of taxable year 2012, because it failed to submit the complete documents to substantiate its administrative claim.

Furthermore, respondent emphasizes that the instant petition is not warranted for lack of jurisdiction as petitioner prematurely elevated this case to this Court.

Respondent also stresses that since tax refunds are in the nature of tax exemptions, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.

**THE COURT'S RULING**

We deny the *Petition for Review.*

Relevant to the resolution of the present case is Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, as follows:

"SEC. 112. *Refunds or Tax Credits of Input Tax. –*

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(A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

***Petitioner's administrative and judicial claims were timely filed.***

Pursuant to the above-quoted Section 112(A), the administrative claim for the issuance of TCC or refund of input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

Applying the foregoing provision, petitioner has two (2) years from the close of the taxable quarter when sales were made to file for the issuance of TCC or a claim for refund of input VAT attributable to its zero-rated or effectively zero-rated sales. Thus, petitioner's last day for filing of its administrative claim for the first quarter of CY 2012 fell on March 31, 2014. Evidently, petitioner's administrative claim for refund filed on March 24, 2014[22] is well within the two (2)-year prescriptive period.

As to the timeliness of the judicial appeal, Section 112(C) of the NIRC of 1997, as amended, speaks of two periods: the period of 120 days from the date of the submission of complete documents within which respondent shall act on petitioner's administrative claim for a refund or credit; and the period of thirty (30) days, which refers to the period for filing a judicial claim with the CTA.

It must be noted that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. In the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[23] the Supreme Court held that it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period, to wit:

> "xxx for purposes of determining ***when*** the supporting documents have been completed - *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.* After all, he may have already completed the necessary documents the moment he filed his

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[22] Exhibits "P-20" and "P-21", Docket, pp. 381 to 383; Refer also to Par. 4, Summary of Stipulated Facts, JSFI, Docket, p. 229.
[23] G.R. No. 207112, December 8, 2015.

administrative claim, in which case, the 120-day period is reckoned from the date of filing. xxx

Then, except in those instances where the BIR would require additional documents to fully appreciate a claim for tax credit or refund, in terms ***what*** additional document must be presented in support of a claim for tax credit or refund - it is the taxpayer who has the right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

**Thereafter, whether these documents are *actually* complete as required by law - is for the CIR and the courts to determine**. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**"

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In the present case, petitioner simultaneously submitted its complete supporting documents upon filing of its administrative claim on March 24, 2014.[24] Hence, the 120-day period started and continued to run from March 24, 2014 until July 22, 2014 since there was no written notice sent by respondent informing petitioner that the documents it submitted were not complete or requiring the latter to submit additional documents. Upon the lapse of the 120-day period on July 22, 2014, petitioner had thirty (30) days or until August 21, 2014 within which to file an appeal via Petition for Review before this Court. In view of respondent's inaction on its claim, petitioner filed the present *Petition for Review* before this Court on August 20, 2014, which is within the required thirty (30)-day period. Clearly, both the administrative and judicial claims were seasonably filed.

***Petitioner is engaged in zero-rated or effectively zero-rated sales***

Petitioner contends that its sales of electricity produced through renewable sources of energy such as hydropower are zero-rated pursuant to Section 108(B)(7) of the NIRC of 1997, as amended.

The Court agrees.

Section 108(B)(7) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337, provides that sale of power generated through renewable sources of energy is among the transactions subject to zero percent VAT, as follows:

> "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:
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> xxx xxx xxx
>
> (7) Sale of power or fuel generated through

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[24] Exhibit "P-22", Docket, pp. 384 to 386.

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."

Section 4.108-5(b)(7) of Revenue Regulations (RR) No. 16-2005, which implements the above-quoted provision, qualifies the applicability of such zero-rating in the following manner:

"SECTION 4.108-5. *Zero-Rated Sale of Services.* –

xxx xxx xxx

(b) *Transactions Subject to Zero Percent (0%) VAT Rate.* – The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT 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 and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; *Provided, however*, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power."

As a corollary, Section 4.108-3(f) of the same RR No. 16-2005 provides:

"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,

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> geothermal, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.
>
> '*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."

It bears emphasis that petitioner is a domestic corporation which is primarily engaged in the business of owning, developing, constructing, operating, repairing and maintaining of hydro-electric power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and acts as a holding company or joint venture partners or investors in the business of developing, operating and/or owning power generation plants and/or converting stations.

Petitioner generates electricity through the following hydroelectric power plants: Ampohaw, Bineng 1, Bineng 2, Bineng 2b, Bineng 3, FLS, Irisan 1 HEPP, Irisan 3, Sal-angan, Lower Labay, Lon-oy and Talomo.[25]

Petitioner's hydroelectric power plants were found by the Energy Regulatory Commission (ERC) to be compliant with the pertinent rules and regulations as evidenced by the Certificates of Compliance (COCs)[26] issued by the ERC to petitioner pursuant to the Implementing Rules and Regulations of RA No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA).

Being in the business of generating power through renewable sources of energy, *viz.*, hydropower, petitioner is therefore entitled to zero percent VAT pursuant to Section 108(B)(7) of the NIRC of 1997, as amended.

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[25] Docket, pp. 326 to 373.
[26] Exhibits "P-2" to "P-13", Docket, pp. 326 to 373.

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***Petitioner is not entitled to the refund of input VAT or the VAT passed-on to it by its suppliers.***

As above discussed, it is clear that petitioner is engaged in zero-rated or effectively zero-rated sales for its sales of electricity generated through renewable source, *i.e.*, hydropower. Nevertheless, petitioner's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and 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 are likewise zero-rated in accordance with Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended by RA No. 9337, in relation to Section 15(g) of RA No. 9513 or the Renewable Energy Act of 2008.

Sections 106(A)(2)(c) and 108(B)(7) of the NIRC of 1997, as amended by RA No. 9337, provide as follows:

> "SEC. 106. *Value-added Tax on* ***Sale of Goods or Properties.*** –
>
> xxx xxx xxx
>
> (A) *Rate and Base of Tax.* – xxx
>
> xxx xxx xxx
>
> (2) **The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:**
>
> xxx xxx xxx
>
> (c) **Sales to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects such sales to zero rate**." *(Emphases supplied)*
>
> "SEC. 108. *Value-added Tax on* ***Sale of Services and Use or Lease of Properties.*** –
>
> xxx xxx xxx

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(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

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**;" *(Emphases supplied)*

In relation thereto, Section 15(g) of RA No. 9513, a special law, which was approved on December 16, 2008, provides that all renewable energy (RE) developers, such as herein petitioner, are entitled to zero-rated VAT **on their purchases** of local supply of goods, properties and services needed for the development, construction and installation of their plant facilities and 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. Said provision states:

"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:

xxx xxx xxx

(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." *(Emphasis supplied)*

The above-stated provision is implemented by Part III, Rule 5, Section 13(G)(b) of DOE Circular No. DC2009-05-0008 issued by the Department of Energy (DOE) on May 25, 2009, which provides as follows:

"PART III.
*Incentives for Renewable Energy Projects and Activities*

RULE 5.
*General Incentives and Privileges for Renewable Energy Development*

SECTION 13. *Fiscal Incentives for Renewable Energy Projects and Activities*

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

xxx xxx xxx

G. *Zero Percent Value-Added Tax Rate*

The following transactions/activities 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:

(a) Sale of fuel from RE sources 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;

(b) Purchase of local goods, properties and services **needed for the development, construction, and installation of the plant facilities** of RE Developers; and

(c) **Whole process of exploration and development of RE sources up to its conversion into power**, including, but not limited to, the services performed by subcontractors and/or contractors." *(Emphasis supplied)*

It bears emphasis that effective zero-rating is not intended as a benefit to the person legally liable to pay the tax, but to relieve certain exempt entities from the burden of indirect tax so as to encourage the development of particular industries.[27] Before, as well as after, the adoption of the VAT, certain special laws were enacted for the various entities exempting sales of goods or supply of services from indirect taxes at the level of their suppliers.[28] Effective zero-rating was intended to relieve the exempt entity from being burdened with the indirect tax which is or which will be shifted to it had there been no exemption.[29]

Clearly, on the basis of the afore-quoted provisions, petitioner, being an RE developer, is entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power.

Evidently, no output VAT should be shifted to or passed on to RE developers, such as herein petitioner, in connection with their purchases of goods and services needed for the development, construction, and installation of their plant facilities as well as to the whole process of exploration and development of RE sources up to its conversion into power. Conversely, no input VAT shall be paid by RE developers on these transactions. There being no input VAT to

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[27] *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.
[28] *Id.*
[29] *Id.*

be paid by RE developers, it necessarily follows that they are not entitled to refund or issuance of TCC from the said purchases.

Moreover, Revenue Memorandum Circular (RMC) No. 42-2003 dated July 15, 2003 provides:

> "Q-3: There are cases where sales transactions of the suppliers of exporters-claimants were already considered as effectively zero-rated by virtue of BIR's approval of their applications for zero-rating. Notwithstanding such approval, these suppliers still issued VAT invoices, which became the sources of the claim for tax credit. Will these input taxes be denied/disallowed or shall the corresponding output taxes be assessed against the suppliers?
>
> A-3: When the supplier has an approved application for effectively zero-rating on its sale to the exporter-claimant, the claimant should be aware that the invoices and receipts from that supplier should not carry any VAT component. With an approved zero-rating from the BIR, the supplier will report its sales as zero-rated.
>
> 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 <u>without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier</u>**." *(Emphasis and underscoring supplied)*

The present case is analogous to the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[30], wherein the Supreme Court held as follows:

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[30] 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 were destined for consumption within the ECOZONE <u>should be free of VAT</u>; <u>hence, no input VAT should then be paid on such purchases, rendering petitioner not entitled to claim a tax refund or credit</u>. Verily, <u>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</u>** 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 export-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.**

We should also take into consideration the nature of VAT as an indirect tax. **Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, <u>the proper party to seek the tax refund or credit should be the suppliers, not the petitioner</u>.**" *(Emphases and underscoring supplied)*

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In the same vein, petitioner's recourse for its purchases of goods and services where it paid VAT is not a claim for refund against the BIR, but to seek reimbursement of its alleged input VAT paid from its suppliers of goods and services since its purchases of local goods, properties and services needed for the development, construction and installation of the plant facilities as well as its purchases of goods, properties and services for the whole process of exploration and development of renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors or contractors, are subject to zero percent VAT under Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended by RA No. 9337, in relation to Section 15(g) of RA No. 9513.

The Court therefore rules that petitioner is not entitled to the refund or issuance of TCC in the aggregate amount of ₱10,283,416.31, allegedly representing its excess and unutilized input VAT arising from its domestic purchases of goods and/or services attributable to its zero-rated sales of electricity for the first quarter of CY 2012.

**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

WE CONCUR:

*( See Concurring and Dissenting Opinion )*
**ROMAN G. DEL ROSARIO**
*Presiding Justice*

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
*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's Division.

**ROMAN G. DEL ROSARIO**
Chairperson
Presiding Justice

REPUBLIC OF THE PHILIPPINES
**Court of Tax Appeals**
QUEZON CITY

*FIRST DIVISION*

| | |
|---|---|
| **HEDCOR, INC.,**<br>Petitioner, | **CTA CASE NO. 8875** |
| | *Members:* |
| - versus - | Del Rosario, *P.J., Chairperson,*<br>Uy, and<br>Mindaro-Grulla, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,**<br>Respondent. | Promulgated:<br>JUL 11 2017 ; 2:58 pm |

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# CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.:***

I concur with the *ponencia* of my esteemed colleague, the Honorable Associate Justice Erlinda P. Uy, but only insofar as it denies the claim for refund or issuance of tax credit certificate (TCC) pertaining to the input value-added tax (VAT) from petitioner's local purchases of goods and services for the calendar year (CY) 2012. With due respect, however, I submit that petitioner's input VAT arising from importation of goods (other than capital goods) and from services rendered by non-residents should be granted, to the extent that the input VAT are duly substantiated and attributable to zero-rated sales

The present case involves a claim for refund in the amount of P10,283,416.31, allegedly representing petitioner's excess and unutilized input value-added tax (VAT) attributable to zero-rated sales for the first quarter of CY 2012, which based on evidence consists of: (i) input tax on purchase of capital goods (not exceeding one million pesos); (ii) local purchases of goods and services; (iii) importation of

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goods (other than capital goods); and (iv) services rendered by non-residents.[1]

## ***Input VAT from local supply of goods, properties and services***

Petitioner is not entitled to refund of input VAT arising from its local purchases of goods, properties and services needed for the development, construction and installation of its plant facilities since the same are subject to zero-rated VAT pursuant to Section15(g) of Republic Act (RA) No. 9513, which provides:

> "**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: xxx
>
> (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 <u>its</u> purchases of <u>local</u> 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. (Emphases supplied)

The provision is categorical in stating that RE Developers are entitled to zero-rated VAT on **their** purchases of **local** supply of goods, properties and services needed for the development, construction and installation of its plant facilities. Thus, it was erroneous for petitioner's suppliers to subject their sales to petitioner

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[1] Exhibits "P-15" and "P-21"

to 12% VAT. In the same vein, it is not correct for petitioner to recognize said passed-on VAT as input taxes.

Since petitioner's purchases are subject to zero-rated VAT, the 12% VAT passed-on by petitioner's local suppliers formed part of petitioner's purchase price. Petitioner is therefore precluded from claiming a refund of the input VAT passed on to it by its local suppliers.

***Input VAT from Importation of Goods (other than capital goods) and from Services Rendered by Non-Residents***

I submit that the VAT zero-rating under Section 15(g) is confined only to RE Developer's purchases of **local** supply of goods, properties and services. It does not contemplate the grant of VAT zero-rating on **RE Developer's importation**. The *third* paragraph of Section 15(g) merely expanded the coverage of **"zero-rated VAT on purchases of local supply of goods, properties and services**" of an **RE Developer** 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" **apart from those covered by the *second* paragraph pertaining to an RE Developer's purchases needed for the development, construction and installation of its plant facilities**.

Interestingly, under Section 15 (b) of RA 9513, **RE Developers are entitled to duty-free <u>(but not VAT-free)</u> importation of RE machinery, equipment and materials**. Thus, insofar as those importations and services by non-residents are concerned, RE Developers remain subject to 12% VAT

Considering that importation by RE Developers is not subject to zero-rated VAT, the VAT paid by petitioner from its importation of goods other than capital goods and from services rendered by non-residents which are attributable to petitioner's zero-rated sales may be refunded pursuant to Section 112 of the NIRC, as amended.

All told, I vote to partially grant the Petition for Review. The Court should accordingly proceed to determine the amount refundable to petitioner relating to its claimed input tax from its importation of goods (other than capital goods) and from services

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rendered by non-residents to the extent that they are duly substantiated and attributable to zero-rated sales.

**ROMAN G. DEL ROSARIO**
Presiding Justice