REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2940** (CTA CASE NO. 10399)
	Present:
-versus-	**RINGPIS-LIBAN,** *P.J.,* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
AIR DRILLING ASSOCIATES PTE LTD., *Respondent.*	Promulgated: JAN 14 2026 3:10pm

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DECISION

ANGELES, *J.*:

Before the Court *En Banc* is a *Petition for Review*[1] filed by the Commissioner of Internal Revenue (petitioner), praying for the reversal of the Decision[2] dated January 4, 2024 (assailed Decision) and Resolution[3] dated May 27, 2024 (assailed Resolution), both promulgated by the Special Second Division (Court in Division) in CTA Case No. 10399, entitled *Air Drilling Associates Pte. Ltd. v. Commissioner of Internal Revenue.*

The assailed Decision granted in favor of Air Drilling Associates Pte. Ltd. (respondent) a refund or tax credit certificate in the amount of ₱1,271,664.34, representing its excess and unutilized input ValueAdded Tax (VAT) attributable to its zero-rated sales for the first quarter of taxable year (TY) 2018.

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[1] *En Banc* (EB) Docket, pp. 5-15, with Annexes.
[2] EB Docket, pp. 29-69.
[3] EB Docket, pp. 23-27.

PARTIES

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested under appropriate laws with the power to grant tax refunds and issue tax credit certificates pursuant to the provisions of the National Internal Revenue Code of 1997 (NIRC) and other tax laws, rules, and regulations.[4]

Respondent is a foreign company organized and existing under the laws of the Republic of Singapore, and duly licensed by the Securities and Exchange Commission (SEC) on March 30, 2007 to transact business in the Philippines through a branch office, to pursue geothermal aerated drilling services and related opportunities. It is VAT registered under BIR Certificate of Registration No. OCN 9RC0000652585E dated August 31, 2016.[5]

FACTS

The Court in Division set forth its findings of fact, as follows:

> During the first (1st) quarter of TY 2018, [respondent] entered numerous transactions, which included, among others, rendering aerated drilling services to Energy Development Corporation (EDC), where it accumulated unutilized creditable input VAT attributable to its zero-rated sales amounting to ₱1,298,232.52.
>
> On April 25, 2018, [respondent] filed its Quarterly VAT Return for the 1st Quarter of TY 2018 and an Amended Quarterly VAT Return for the same period on September 21, 2018.
>
> Allegedly, the above-mentioned creditable input VAT was not credited against [respondent's] output VAT liability in the succeeding quarters.
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> Thus, on July 15, 2020, [respondent] filed with the BIR a letter dated July 14, 2020, requesting the refund of the total amount of ₱1,298,232.52, allegedly representing unutilized input VAT credits arising from its local purchases of goods and services, purchases of services rendered by non-residents and importation of non-capital goods attributable to its zero-rated sale of service to EDC for the 1st Quarter of TY 2018.
>
> However, [respondent's] administrative claim for a refund was denied through a letter dated September 29, 2020, issued by Regional Director Maridur Rosario.

[4] *Pre-Trial Order* dated September 6, 2021, Division Docket - Vol. I, p. 395.
[5] Exhibit "P-2", Division Docket - Vol. II, p. 523.

PROCEEDINGS BEFORE THE COURT IN DIVISION

Aggrieved by the denial of its administrative refund claim, respondent filed a *Petition for Review*[6] before the Court in Division on November 16, 2020.

Petitioner filed its *Answer*[7] on February 3, 2021, and submitted the BIR Records of the case on March 9, 2021.[8]

The pre-trial conference took place on June 24, 2021.[9] Thereafter, the parties submitted their *Joint Stipulation of Facts and Issues*[10] on July 14, 2021, which was approved by the Court in Division on July 28, 2021.[11] The Pre-Trial Order was then issued on September 6, 2021.[12]

Respondent filed a Motion to Commission an Independent Certified Public Accountant (ICPA) on October 20, 2021.[13]

During the hearing for the commissioning of the ICPA on April 5, 2022, both respondent's counsel and the intended ICPA, Mr. Adan Delamide, failed to appear. As such, the Court in Division directed respondent's counsel to explain his absence during the hearing and to pay a fine. The hearing was then cancelled and reset.[14] Respondent's counsel submitted his *Explanation and Compliance*[15] on April 22, 2022, which was noted and admitted in the Order dated April 26, 2022.[16]

The hearing for the commissioning of the ICPA proceeded on April 26, 2022, with the Court in Division ultimately granting the above Motion.[17] The hearing for the presentation of respondent's witnesses, for the testimonies of Ms. Rosebel Liu[18] and the ICPA,[19] likewise proceeded on May 18, 2022 and June 23, 2022, respectively. Meanwhile, the ICPA Report was filed on May 26, 2022.[20]

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[6] Division Docket - Vol. I, pp. 10-17.
[7] Division Docket - Vol. I, pp. 249-261.
[8] Division Docket - Vol. I, p. 267.
[9] Division Docket - Vol. I, pp. 296-298.
[10] Division Docket - Vol. I, p. 356.
[11] Division Docket - Vol. I, p. 364.
[12] Division Docket - Vol. I, pp. 394-399.
[13] Division Docket - Vol. I, pp. 404-407.
[14] Division Docket - Vol. I, pp. 435-436.
[15] Division Docket - Vol. I, pp. 437-440.
[16] Division Docket - Vol. I, pp. 443-444.
[17] *Id.*
[18] Division Docket - Vol. I, pp. 458-459.
[19] Division Docket - Vol. I, p. 488-489.
[20] Division Docket - Vol. I, pp. 460-473.

Pursuant to the Order[21] dated June 30, 2022, the case was transferred to the Second Division.

Respondent filed a *Motion for Extension of Time to File Formal Offer of Evidence and Correction of Exhibit Marking*,[22] which was granted by the Court in Division.[23] On August 12, 2022, respondent filed its *Formal Offer of Evidence*[24] without any comment from petitioner.[25] The Court in Division resolved respondent's Formal Offer of Evidence, admitting all of respondent's offered exhibits, except for Exhibit "P-8-1-2" for not being found in the records of the case.[26]

The hearing for the presentation of petitioner's sole witness, Revenue Officer Camille D. Bugayong, then took place on October 12, 2022.[27] Petitioner filed his Formal Offer of Evidence[28] on October 21, 2022, while respondent filed its Comment[29] thereto on October 26, 2022. The Court in Division admitted all of petitioner's offered exhibits.[30]

The parties submitted their respective memoranda on December 29, 2022 for respondent,[31] and on January 11, 2023 for petitioner.[32] The case was then submitted for decision on January 17, 2023.[33]

The Court in Division promulgated the assailed Decision,[34] the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED.** Accordingly, [petitioner] Commissioner of Internal Revenue is **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of [respondent] Air Drilling Associates Pte. Ltd. the reduced amount of **₱1,271,664.34**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the 1st Quarter of taxable year 2018.
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> **SO ORDERED.**

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[21] Division Docket - Vol. I, p. 490.
[22] Division Docket - Vol. I, pp. 491-492.
[23] Division Docket - Vol. I, p. 495.
[24] Division Docket - Vol. II, pp. 501-519.
[25] *Records Verification* dated September 16, 2022, Division Docket - Vol. II, p. 822.
[26] Division Docket - Vol. II, pp. 824-825.
[27] Division Docket - Vol. II, pp. 827-828.
[28] Division Docket - Vol. II, pp. 829-832.
[29] Division Docket - Vol. II, pp. 833-835.
[30] Division Docket - Vol. II, pp. 839-840.
[31] Division Docket - Vol. II, pp. 841-867.
[32] Division Docket - Vol. II, pp. 868-882.
[33] Division Docket - Vol. II, p. 887.
[34] *Supra*, note 2.

Petitioner filed a *Motion for Partial Reconsideration*[35] on January 25, 2024, to which respondent failed to file a comment.[36]

On May 27, 2024, the assailed Resolution[37] was promulgated, finally denying the above Motion for lack of merit.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Petitioner filed a *Motion for Extension of Time to File Petition for Review* on June 21, 2024,[38] which was granted by this Court subject to the condition that the said Motion was filed on time.[39]

Thereafter, the instant *Petition for Review*[40] was filed via registered mail on July 3, 2024, and received by this Court on July 8, 2024. Respondent filed its *Comment* thereto on August 22, 2024.[41]

Thus, on October 2, 2024, the case was submitted for decision.[42]

ISSUES

Petitioner raises the following grounds for the allowance of the instant *Petition for Review*:

I.

THE PETITIONER MAINTAINS THAT THE RESPONDENT MUST ALSO FULFILL THE PRESCRIBED REQUIREMENTS UNDER SECTION 18(A), (B), and (C), RULE 5, PART III OF THE IMPLEMENTING RULES OF RA 9513 TO QUALIFY FOR VAT ZERO-RATING, WHICH THE RESPONDENT FAILED TO COMPLY.

II.

PERUSAL OF THE CONTRACT BETWEEN THE EDC AND RESPONDENT (EXHIBIT "P-12") REVEALS NO CONNECTION TO "AERATED DRILLING SERVICES NIGBU SITE PACKAGE #1" OR TO THE RESPONDENT'S VAT OFFICIAL RECEIPTS NO. 0619 DATED MARCH 21,

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35 Division Docket - Vol. II, pp. 943-951.
36 *Records Verification* dated April 17, 2024, Division Docket - Vol. II, p. 956.
37 *Supra*, note 3.
38 EB Docket, pp. 1-2.
39 *Resolution* dated June 28, 2024, EB Docket, pp. 1-2.
40 EB Docket, p. 90.
41 EB Docket, pp. 86-89.
42 EB Docket, p. 60.

2018 (EXHIBIT "P-80"), NO. 0617 DATED FEBRUARY 01, 2018 (EXHIBIT "P-81") AND NO. 0618 DATED FEBRUARY 22, 2018 (EXHIBIT "P-82").[43]

ARGUMENTS OF THE PARTIES

Petitioner's arguments

Citing Section 15(g) of Republic Act (RA) No. 9513, otherwise known as the Renewable Energy Act of 2008, and Section 18(A), (B), and (C), Rule 5, Part III of Department Circular (DC) No. DC2009-05-0008, or its Implementing Rules and Regulations (IRR), petitioner argues that in order to avail of VAT zero-rating, a Renewable Energy (RE) Developer must have secured and presented the following documents: **(1)** Department of Energy (DOE) Certificate of Registration; **(2)** Board of Investments (BOI) Certificate of Registration; and **(3)** DOE Certificate of Endorsement.

Petitioner claims that a sub-contractor of the RE Developer must also submit the latter's above documents, and equally comply with any condition imposed on the said RE Developer, as failure to do so would put the sub-contractor in a better position than the RE Developer.

Petitioner also argues that a perusal of the "Description" of respondent's Billing Invoice Nos. 0203 to 0206, dated January 31, 2018, December 31, 2017, January 3, 2018 and January 31, 2018, respectively, shows that these refer to project "Aerated Drilling Services NIGBU Site Package #1." Further, a perusal of respondent's VAT Official Receipt Nos. 0617 to 0619, dated February 1, 2018, February 22, 2018, and March 21, 2018, respectively, shows that these refer to Billing Invoice Nos. 0203, and 0205 to 0206. As such, petitioner posits that VAT Official Receipt Nos. 0620 dated May 18, 2018, and 0621 dated May 23, 2018, refer to payment for a project located at the NIGBU Site.

Petitioner emphasizes that NIGBU refers to "Negros Island Geothermal Business Unit."

Petitioner contends that respondent failed to submit the BOI Certificate of Registration and DOE Certificate of Endorsement for the project located at Northern Negros, Negros Occidental or the NIGBU

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[43] EB Docket, p. 7-8.

site. Such failure is allegedly fatal to respondent's application for judicial tax refund.

Furthermore, petitioner argues that a perusal of the contract between EDC and respondent shows that it did not mention any scope of work for a project located at the NIGBU site. Respondent's failure to establish the connection between the contract and respondent's aforesaid VAT Official Receipts is fatal considering that the transaction subject of zero-rating must be related to the process of exploring and developing renewable energy sources up to its conversion into power, as required under RA No. 9513.

Respondent's counter-arguments

Respondent counters by arguing that the grounds raised by petitioner in the instant *Petition* are mere rehash of the arguments raised in his *Motion for Partial Reconsideration*[44] filed before the Court in Division. Since the latter had already exhaustively discussed the matters raised by petitioner, the findings of fact by the CTA, being a highly specialized court, must be accorded respect and are deemed final and conclusive.

Respondent further points out that there are no new matters or issues raised in the instant *Petition* that would overcome the assailed Decision and Resolution.

Thus, respondent submits that the Court in Division did not commit any error in granting the judicial tax refund in its favor.

RULING OF THE COURT *EN BANC*

The instant *Petition* must be dismissed.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides, to wit:

RULE 8
PROCEDURE IN CIVIL CASES

xxx xxx xxx

SEC. 3. *Who may appeal; period to file petition.* —

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[44] *Supra*, note 35.

xxx xxx xxx

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, **the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.**

Pursuant thereto, a party adversely affected by a decision or resolution of the Court in Division may file an appeal before the Court *En Banc* within fifteen (15) days from its receipt of the assailed decision or resolution. An additional period not exceeding fifteen (15) days counted from the expiration of the original period may be granted, subject to several conditions, one of which is the timely filing of the proper motion before the expiration of the original period.

Records show that the BIR received a copy of the assailed Resolution on June 6, 2024, while the Office of the Solicitor General (OSG) received a copy of the same on May 31, 2024.[45] Between the date of receipt by the BIR and the date of receipt by the OSG, it is the latter from which the 15-day period to appeal shall be counted.

This matter has already been settled by jurisprudence. As early as in the case of *Commissioner of Internal Revenue v. La Suerte Cigar & Cigarette Factory,*[46] the Supreme Court recognized the long established procedure of requiring the OSG to represent the interest of the government in appellate proceedings, the OSG having the primary responsibility to appear for the government in appellate proceedings.

The above case was upheld in *LG Electronics Philippines, Inc v. Commissioner of Internal Revenue,*[47] where the Supreme Court proclaimed that the BIR Legal Division is not the proper representative of petitioner in appellate proceedings, as it is the OSG who is the proper party to represent the interest of the government. The High Court went so far as to say that the BIR Legal Division should be mindful of this procedural lapse in the future.[48]

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[45] Division Docket, p. 957.
[46] G.R. No. 144942, July 4, 2002.
[47] G.R. No. 165451, December 3, 2014.
[48] *Id.*

Such interpretation is in line with Section 35 of the Administrative Code of 1987,[49] which vests in the OSG the power and duty to represent the government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals, including the CTA, in all civil actions and special proceedings in which the government or any officer thereof in his official capacity is a party. While the said provision likewise authorizes the OSG to deputize legal officers of government departments, bureaus, and agencies to represent the government in cases involving their respective offices brought before the courts, such deputized legal officers remain under the supervision and control of the OSG.[50]

In view thereof, the Supreme Court in *Republic v. Viaje*[51] declared that the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and that the OSG remains as the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.

In *National Power Corp. v. National Labor Relations Commission*,[52] the Supreme Court elucidated that copies of orders, notices, and decisions served on the deputized counsel, acting as agent or representative of the OSG, are insufficient and not binding until they are actually received by the latter. The High Court further stated that **the proper basis for computing the reglementary period to file an appeal and for determining whether a decision had attained finality is service on the OSG, and not service on the deputized lawyer.**[53]

Applying the foregoing, the OSG received a copy of the assailed Resolution on May 31, 2024.[54] Thus, petitioner had fifteen (15) days from such receipt, or until **June 17, 2024**,[55] to file an appeal with this Court. Since petitioner filed its *Motion for Extension of Time to File Petition for Review* on **June 21, 2024**,[56] the said Motion, together with the instant *Petition*, were filed out of time.

The fifteen (15)-day period to appeal the assailed Resolution cannot be reckoned from the date of receipt by the BIR on June 6, 2024 because as previously discussed, it is notice to the OSG that is binding,

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[49] Executive Order No. 292 , July 25, 1987.
[50] *Id.*
[51] G.R. No. 180993, January 27, 2016.
[52] G.R. Nos. 90933-61, May 29, 1997.
[53] *Id.*
[54] Division Docket, p. 957.
[55] June 15, 2024 fell on a Saturday. The next working day was on June 17, 2024.
[56] *Supra*, note 38.

as it is the OSG, as principal counsel of the government, who is entitled to the service of all court orders, notices, and decisions.[57]

Petitioner is reminded that the right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in accordance with the provisions of law.[58] Moreover, **the perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well, and failure to perfect an appeal within the period fixed by law renders the judgment appealed from final and executory.**[59] Furthermore, if the court has no jurisdiction over the action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[60]

Petitioner's failure to file its *Motion for Extension of Time to File Petition for Review* within the period fixed by the RRCTA, and in accordance with prevailing rules and jurisprudence, has caused the assailed Resolution to become final and executory. Consequently, this Court has no other recourse but to dismiss the present appeal.

ACCORDINGLY, premises considered, the instant *Petition for Review* is **DISMISSED** for being filed out of time.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

[57] *Supra*, note 51.
[58] *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005.
[59] *Mitsubishi Motors Phils. Corp. v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.
[60] *AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice