Third Division

YH GREEN ENERGY INCORPORATED, *Petitioner,*	**CTA CASE NO. 9784** Members:
-versus-	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 07 2021 1:55 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review,[1] filed by petitioner YH Green Energy Incorporated against respondent Commissioner of Internal Revenue ("CIR"), for the refund of Twenty-Nine Million Seven Hundred Six Thousand Seven-Hundred Fifty-One Pesos (₱29,706,751.00) representing its unutilized input value added tax ("VAT") for the 4[th] quarter of taxable year 2015.

The Parties

Petitioner, YH Green Energy Incorporated, is a corporation duly organized under the laws of the Republic of the Philippines[2] primarily to produce, generate, market, distribute, and sell energy and electricity from a renewable energy system and hybrid energy system.[3] It is a VAT-registered entity with Taxpayer Identification No. 008-906-087-000.[4] It is also registered

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[1] Division Records Vol. 1, pp. 10-209.
[2] Exhibit "P-1", *id.*, p. 23.
[3] Exhibit "P-5", *id.*, pp. 28-36.
[4] Exhibit "P-4", *id.*, p. 27.

with the Board of Investments ("BOI") as a renewable energy developer of solar energy resources.[5]

On the other hand, respondent CIR is empowered to perform various duties of his office including approving claims for refund or tax credit as provided by law.[6] Respondent may be served with orders and other processes at the BIR National Office Building, Room 703, Agham Road, Diliman, Quezon City.[7]

The Facts

On 5 October 2017, petitioner filed with Bureau of Internal Revenue ("BIR") Revenue District Office ("RDO") No. 80 an Application for Tax Credits/ Refunds (BIR Form No. 1914) requesting the refund of its unutilized input VAT for the fourth quarter of taxable year 2015 in the aggregate amount of ₱29,706,751.00.[8]

Subsequently, on 13 October 2017, respondent issued a Letter of Authority (SN: eLA201500022774) authorizing Revenue Officer Jessa Joy Bismanos and Group Supervisor Arlene Adriano of RDO No. 80 to examine petitioner's books of accounts and other accounting records for the period 1 October 2015 to 31 December 2015, pursuant to a mandatory audit arising from a claim for VAT refund.[9]

In a letter, dated 22 January 2018, respondent, through Assistant Commissioner for Assessment Service Erlinda A. Simple, denied petitioner's claim for VAT refund for lack of factual basis, which petitioner received on 31 January 2018.[10]

Aggrieved, petitioner filed through registered mail the instant Petition for Review on 2 March 2018 praying that judgment be rendered in favor of petitioner and that the claim for input VAT refund in the amount of ₱29,706,751.00 be granted.[11]

Summons were served upon respondent CIR on 3 April 2018 and the Office of the Solicitor General on 2 April 2018.[12]

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[5] Exhibit "P-2", *id.*, p. 24.
[6] Amended Pre-Trial Order, Division Records Vol. 2, pp. 977-983.
[7] *Ibid.*
[8] Exhibit "P-15", Division Records Vol. 1, p. 70.
[9] Exhibit "P-7", *id.*, p. 61.
[10] Exhibit "P-6", *id.*, pp. 58-60; *See also* par. 5, Petition for Review, *id.*, p. 11.
[11] *Id.*, pp. 10-209.
[12] *Id.*, pp. 210-211.

On 18 May 2018, within the extended period,[13] respondent filed his Answer,[14] interposing the following defenses:

(1) the denial of petitioner's VAT refund claim is proper due to its failure to prove that it had zero-rated or effectively zero-rated sales for the 4th quarter of 2015;

(2) in a claim for tax refund, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements thereof; and

(3) a claim for tax refund is in the nature of tax exemptions; thus, it cannot rest on vague, uncertain, or indefinite inference but should be granted only upon clear and unequivocal provision of law.

Meanwhile, on 29 May 2018, respondent transmitted the BIR Records of the case consisting of 221 pages contained in 1 folder and filed the corresponding Compliance,[15] which the Court took note in a Minute Resolution dated 30 May 2018.[16]

Following the Pre-Trial Conference and the issuance of an Amended Pre-Trial Order,[17] trial ensued.

During the hearing on 20 November 2018,[18] petitioner presented its accounting officer, Rachelle Y. Silangan, who testified and identified her Judicial Affidavit[19] and Supplemental Judicial Affidavit.[20]

Petitioner also intended to present as its witness Bureau of Customs Commissioner Rey Leonardo Guerrero or any of his authorized representatives. However, despite issuance of a Subpoena Ad Testificandum[21] and various resettings[22] of the hearing for the presentation of the witness, the intended witness failed to appear.[23]

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[13] *Id.*, pp. 212-217.
[14] *Id.*, pp. 218-224.
[15] *Id.*, pp. 227-230.
[16] *Id.*, p. 231.
[17] Division Records Vol. 2, pp. 976-983.
[18] *Id.*, pp. 984-986.
[19] Exhibits "P-56"and "P-56-a", Division Records Vol. 1, pp. 252-259.
[20] Exhibits "P-58" and "P-58-a", Division Records Vol. 2, pp. 930-935.
[21] *Id.*, p. 997; *id.*, p. 1008.
[22] *Id.*, pp. 998-1000; *id.*, pp. 1009-1011.
[23] *Ibid.*

In lieu of the presentation of the supposed BOC witness, respondent's counsel manifested, during the hearing on 30 July 2019,[24] that they were willing to stipulate on the existence of certain documents[25] which were supposed to be identified by the BOC witness. Petitioner's counsel manifested that some documents[26] were denied by respondent for failure to substantiate. It was further noted that certain exhibits[27] had already been marked and compared during the commissioner's hearing. In view of the foregoing stipulations, petitioner's counsel manifested that he had no further evidence to present. Thus, the presentation of petitioner's evidence was terminated.

In a Resolution dated 14 October 2019,[28] the Court admitted the following documentary evidence of petitioner:

Exhibit	Description
"P-1"	The Certificate of Incorporation issued by the SEC on Nov. 13, 2014
"P-2"	The Certificate of Registration issued by the BOI on Sept. 22, 2015
"P-3"	The Secretary's Certificate of YH Green Energy Incorporated dated Feb. 28, 2018
"P-4"	The VAT Certificate of Registration of YH Green Energy Incorporated (BIR Form 2303)
"P-5"	The certified true copy of the Articles of Incorporation
"P-6"	The copy of the CIR Ruling dated Jan. 22, 2018
"P-7"	The copy of the BIR LOA dated Oct. 13, 2017
"P-8"	Sworn Certification of Completeness of documentary requirement for refund
"P-9"	Certification from the Department of Finance
"P-10"	Certification from the Board of Investments
"P-11"	Affidavit that petitioner filed for VAT refund with the BIR
"P-12"	Sworn Statement that petitioner did not file any similar claim for refund with BOI, BOC, and DOF
"P-13"	Tax Verification Certificate
"P-15"	Application for Tax Credit/ Refund (BIR Form 1914)
"P-16"	Quarterly VAT Return for Quarter ended Dec. 31, 2015
"P-17"	Quarterly VAT Return for Quarter ended Sept. 30, 2015
"P-18"	Clearance- Application Processing from Bureau of Customs
"P-19"	Letter to Revenue District Office applying for Tax Refund
"P-20"	2015 BIR Annual Registration Fee (BIR Form 0605) with payment slip Metro Bank
"P-23"	Solar Module
"P-24"	Solar Module
"P-31"	Solar Mounting
"P-32"	Solar Mounting

[24] Division Records Vol. 3, pp. 1012-1014.
[25] **Exhibits "P-23", "P-24", "P-25", "P-26", "P-27", "P-29", "P-30", "P-31", "P-32", "P-34" to "P-40", "P-42", "P-45" to "P-48", and "P-50" to "P-51".**
[26] "P-28", "P-33", "P-49", "P-52", "P-41" and "P-44".
[27] "P-53-1" to "P-53-29".
[28] Division Records Vol. 3, pp. 1057-1060.

"P-33"	Solar Mounting
"P-34"	Solar Mounting
"P-35"	Solar Mounting
"P-36"	Solar Mounting
"P-37"	Solar Mounting
"P-39"	Solar Module
"P-40"	Solar Module
"P-48"	Solar Module
"P-51"	Solar Module
"P-52"	Solar Module
"P-53-1"	Debit Memo Metro Bank
"P-53-2"	Debit Memo Metro Bank
"P-53-3"	Debit Memo UCPB Bank
"P-53-4"	Debit Memo UCPB Bank
"P-53-5"	Debit Memo UCPB Bank
"P-53-6"	Debit Memo UCPB Bank
"P-53-7"	Debit Memo UCPB Bank
"P-53-8"	Debit Memo UCPB Bank
"P-53-9"	Debit Memo UCPB Bank
"P-53-10"	Debit Memo UCPB Bank
"P-53-11"	Debit Memo UCPB Bank
"P-53-12"	Debit Memo UCPB Bank
"P-53-13"	Debit Memo UCPB Bank
"P-53-14"	Debit Memo UCPB Bank
"P-53-15"	Debit Memo UCPB Bank
"P-53-16"	Debit Memo UCPB Bank
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"P-53-23"	Debit Memo UCPB Bank
"P-53-24"	Debit Memo UCPB Bank
"P-53-25"	Debit Memo UCPB Bank
"P-53-26"	Debit Memo UCPB Bank
"P-53-15"	Debit Memo UCPB Bank
"P-53-27"	Debit Memo UCPB Bank
"P-53-28"	Debit Memo UCPB Bank
"P-53-29"	Debit Memo UCPB Bank
"P-54"	Petitioner's Audited Financial Statement 2015
"P-55"	BIR Income Tax Return for 2016
"P-56"	Judicial Affidavit of Rachelle Y. Silagan[29]
"P-58"	Supplemental Judicial Affidavit of Rachelle Y. Silagan

Thereafter, respondent presented his sole witness, Dexter Bustillos, a Revenue Officer in Tax Audit Review Division who testified and identified his Judicial Affidavit[30] during the hearing on 29 January 2020.[31]

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[29] The Court observed that page 6 of the Judicial Affidavit is missing.

[30] Exhibits "R-5" and "R-5-a", Division Records Vol. 3, pp. 1072-1075.

[31] Division Records Vol. 3, pp. 1099-1001.

In a Resolution dated 26 June 2020,[32] respondent's Motion to Admit Attached Formal Offer of Evidence was granted and the following documentary evidence were admitted:

Exhibit	Description
"R-1"	Assignment and Routing Slip
"R-2"	Quarterly Value Added Tax Return or BIR Form 2550Q for the period October 1, 2015 to December 31, 2015
"R-3"	Memorandum dated January 22, 2018
"R-4"	BIR Investigation Records

On 25 August 2020, the Court received respondent's Memorandum, filed through registered mail on 17 August 2020.[33] On 3 December 2020, the Court received petitioner's Memorandum, filed through registered mail on 26 October 2020.[34]

The case was then submitted for decision on 9 December 2020.[35] Hence, this Decision.

The Issue[36]

The issues submitted for the Court's resolution are the following:

I. Whether the administrative decision served to petitioner on denying the claim for refund based on the evidence presented was correct; and

II. Whether or not petitioner is entitled to a refund in the amount of ₱29,706,751.00 representing petitioner's unutilized input VAT for the fourth quarter of taxable year 2015.

Arguments of the Parties

Petitioner's Arguments[37]

Petitioner argues that it satisfied all the requisites for the VAT refund claim to prosper.

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[32] *Id.*, pp. 1119-1121.
[33] *Id.*, pp. 1122-1131.
[34] *Id.*, pp. 1134-1142.
[35] *Id.*, pp. 1143-1144.
[36] *See* Amended Pre-Trial Order, Division Records Vol. 2, pp. 978.
[37] *See* Memorandum for Petitioner, Division Records Vol. 3, pp. 1134-1142; Petition for Review, Division Records Vol. 1, pp. 15-18.

According to petitioner, it qualifies as a generation company under the ***EPIRA Law*** engaged in zero-rated sale of renewable energy pursuant to ***R.A. No. 9337.***[38] While petitioner admits that it has no recorded sale of electricity yet for the year 2015 as it only started generating electricity in 2016, it avers that, at the time of filing in 2017 of the administrative refund claim, it already had zero-rated sales to which its input taxes from importation of equipment in 2015 can be attributed. Petitioner contends that the timing difference between the period when the input taxes were incurred (i.e. 2015) and the first zero-rated sales were recorded (i.e. 2016) is not fatal to its claim because the zero-rated sales need not be in the same period when the input taxes were incurred.

Petitioner also refers to Exhibit "P-57", which is a supposed letter from BIR Regional Director disallowing a portion of its input VAT refund claim. According to petitioner, such partial disallowance proves that it was able to comply with the substantiation requirements of the BIR.

With regard to the timeliness of its administrative claim for VAT refund, petitioner claims that the administrative refund filed on 5 October 2017 is within the two (2)- year prescriptive period counted from date of filing of the corresponding quarterly VAT return. With respect to the judicial claim for refund, petitioner alleges that the CIR denied the refund claim on 22 January 2018, which is well within the 120-day period to resolve the claim. Thus, the judicial claim filed on 2 March 2018 was timely made.

Respondent's Arguments[39]

In refutation, respondent counters that petitioner did not comply with all the requisites for the VAT refund claim to prosper.

Citing ***Luzon Hydro Corporation v. Commissioner of Internal Revenue***,[40] respondent argues that the claim for refund should be denied for failure to establish that there were zero-rated sales during the period of claim. Respondent reiterates the finding of the investigating office of the BIR that petitioner's Quarterly VAT Return for the 4th quarter of taxable year 2015 does not reflect any declared zero-rated sales pertaining to revenues generated from the sale of renewable energy. Respondent further points out that petitioner's Audited Financial Statements and Annual Income Tax Return for taxable year 2015 show that revenues for the year solely came from interest income earned on bank deposits. Thus, for petitioner's failure to prove that it had zero-rated sales for the 4th quarter of taxable year 2015, its input VAT refund claim was correctly denied by the BIR.

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[38] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other purposes.
[39] *See* Memorandum for Respondent, Division Records Vol. 3, pp. 1122-1131.
[40] G.R. No. 188260, 13 November 2013.

He reiterates that for tax refunds, the burden of proof lies with the applicant and such proof includes not only entitlement to the claim but also compliance with documentary and evidentiary requirements.

Finally, respondent relies on the strict construction of tax refunds being in the nature of tax exemptions.

The Ruling of the Court

The instant Petition for Review must be denied.

Requisites for claiming unutilized input VAT attributable to zero-rated sales.

The provision that governs the present claim for refund of unutilized input VAT attributable to zero-rated sales is ***Section 112 (A) and (C) of the National Internal Revenue Code of 1997 ("Tax Code"), as amended***, which reads:

> "SEC. 112. Refunds or Tax Credits of Input Tax. —
>
> (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.
>
> (B) ...
>
> (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.

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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, Ours.)

Based on the foregoing, the following requisites must be complied with by the taxpayer-applicant to successfully obtain a tax refund/credit:[41]

(1) The taxpayer-claimant is VAT registered;
(2) The taxpayer-claimant is engaged in zero-rated or effectively zero-rated sales;
(3) There are creditable input taxes due or paid attributable to the zero-rated or effectively zero-rated sales;
(4) This input tax has not been applied against the output tax; and
(5) The application and the claim for a refund have been filed within the prescribed period.

At this juncture, it must be emphasized that cases filed before the CTA are litigated *de novo*.[42] As such, parties are expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to the CTA all evidence required for the successful prosecution of its claim.[43] Consequently, petitioner must competently establish its claim for refund or tax credit following the foregoing requisites.

The administrative and judicial claims for refund were timely filed.

The Court shall first determine petitioner's compliance with the *fifth requisite*, that is, that the application and claim for refund have been filed within the prescribed period.

It is imperative to discuss the proper interpretation of ***Sections 112 (A) and (C) of the Tax Code*** in relation to the timeliness of filing of the administrative and judicial claims for refund. In so doing, the Court is guided by the pronouncement in ***Commissioner of Internal Revenue v. Mindanao I Geothermal Partnership***,[44] which outlined the mandate of the provisions as follows:

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[41] Commissioner of Internal Revenue v. Toledo Power Co., G.R. Nos. 195175 & 199645, 10 August 2015; *See also* Commissioner of Internal Revenue v. Filminera Resources Corporation, G.R. No. 236325, 16 September 2020.
[42] Commissioner of Internal Revenue v. Univation Motor Philippines, Inc., G.R. No. 231581, 10 April 2019.
[43] *Id.*; Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.
[44] G.R. No. 192006, 14 November 2018.

"The precise mandate of these provisions has been the subject of many Supreme Court decisions such as the *Atlas Consolidated Mining and Dev't. Corp. v. CIR, CIR v. Mirant Pagbilao Corp.*, and *CIR v. San Roque Power Corp.* cases. The jurisprudence interpreting Section 112 was further summarized by the Court in *Silicon Philippines, Inc. v. CIR*:

A. Two-Year Prescriptive Period

1. It is **only the administrative claim that must be filed within the two-year prescriptive period**. *(Aichi)*
2. The **proper reckoning date for the two-year prescriptive period is the <u>close of the taxable quarter when the relevant sales were made</u>**. *(San Roque)*
3. The only other rule is the *Atlas* ruling, which applied only from 8 June 2007 to 12 September 2008. *Atlas* states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. *(San Roque)*

B. 120+30-Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.
2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. *(Aichi* and *San Roque)*
4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. *(San Roque)*
5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. *(San Roque)*"

(Emphasis, Ours.)

To summarize, the refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales must be administratively filed with the BIR within two (2) years counted from the close of the taxable quarter when the relevant sales were made. Meanwhile, the judicial claim for refund must be filed in Court within 30 days from either: (1) receipt of respondent's decision, which must be rendered within the 120-day period to resolve; or (2) after the expiration of the 120-day period, in which case, the claim is deemed **denied.**

Applying the foregoing, petitioner's contention that the two-year prescriptive period is reckoned from the date of filing of the corresponding Quarterly VAT Return[45] is utterly misplaced. To reiterate, the two-year prescriptive period for filing the administrative claim for VAT refund pursuant to ***Section 112 (A) and (C) of the Tax Code*** is reckoned from the **close of the taxable quarter when the sales were made.**

Petitioner's erroneous interpretation of ***Section 112(A) and (C) of the Tax Code*** led to its failure to comply with the 3rd requisite requiring the existence of zero-rated sales during the period of claim against which the claim input VAT will be attributed. This will be discussed further in the succeeding section.

In any case, following petitioner's representation, the Court shall consider the 4th quarter of taxable year 2015 as the relevant period of claim.

Counting two (2) years from the close of the 4th quarter of taxable year 2015, which was on 31 December 2015, petitioner had until 31 December 2017 to file its administrative claim for VAT refund. Thus, petitioner's application for VAT refund/credit filed with the BIR on 5 October 2017[46] was seasonably made.

As to the timeliness of the judicial claim, counting 120 days from the filing of the administrative claim on 5 October 2017, respondent had until 2 February 2018 to resolve the claim. However, on 22 January 2018, even before the lapse of the 120-day period to resolve, respondent rendered a decision denying petitioner's claim. Petitioner received his decision on 31 January 2018.[47] Counting 30 days from petitioner's receipt, it had until 2 March 2018 to file a judicial claim. Thus, the filing of the instant Petition for Review on 2 March 2018 was likewise seasonably made.

Petitioner is a VAT-registered taxpayer.

Petitioner complied with the *first requisite,* that it is a VAT-registered taxpayer with TIN 008-906-087-000, as evidenced by BIR Certificate of Registration No. 2RC0000951531.[48]

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[45] *See* par. 22, Petition for Review, Division Records Vol. I, pp. 17.
[46] Exhibit "P-15", *id.*, p. 70.
[47] Exhibit "P-6", *id.*, pp. 58-60; *See also* par. 5, Petition for Review, *id.*, p. 11.
[48] Exhibit "P-4", *id.*, p. 27.

<u>Petitioner failed to establish that it is engaged in zero-rated sales.</u>

Petitioner failed to prove compliance with the *second requisite* requiring that the claimant is engaged in zero-rated sales.

The relevant provision governing petitioner's alleged zero-rated sales of energy from renewable sources is ***Section 108 (B)(7) of the Tax Code, as amended***:

> "Section 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –
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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.
>
> ...
>
> (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."

This is further amended by ***R.A. No. 9513***, otherwise known as the ***Renewable Energy Act of 2008***, which provides that the sale of power generated from RE sources by RE Developers, duly certified by the DOE in consultation with the BOI, is subject to zero-rated VAT, to wit:

> "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:
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> ...

(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, Ours.)

Sections 25 and 26, Chapter VII of R.A. No. 9513 further provide that the DOE Certification shall serve as basis for the entitlement of RE developers to incentives but is without prejudice to further requirements that may be imposed by the concerned agencies charged with the administration of fiscal incentives, to wit:

"CHAPTER VII
GENERAL INCENTIVES

...

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 DOE,** 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 (DOE). — 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 DOE, 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 DOE 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."**

(Emphasis and underscoring, Ours.)

Section 33, Chapter IX of R.A. No. 9513 also requires the DOE, in consultation with relevant government agencies and RE stakeholders, to promulgate the implementing rules and regulations of the Act.

Thus, the DOE issued ***DOE Circular No. DC2009-05-0008*** or the ***Rules and Regulations Implementing Republic Act No. 9513 ("IRR")*** on 25 May 2009, which provides:

"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:

A. *Income Tax Holiday (ITH)*

...

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;

(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, Ours.)

For sales to qualify for VAT zero-rating, ***Section 18, Part III, Rule 5 of the IRR of R.A. No. 9513*** provides the conditions for availment of the incentives as follows:

"PART III
Incentives for Renewable Energy Projects and Activities

RULE 5
General Incentives and Privileges for Renewable Energy Development

SECTION 18. *Conditions for Availment of Incentives and Other Privileges.* —

A. *Registration/Accreditation with the DOE*

For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall register with the DOE, through the Renewable Energy Management Bureau) (REMB). The following certifications shall be issued**:

(1) ***DOE Certificate of Registration*** — **issued to an RE Developer holding a valid RE Service/Operating Contract.**
For existing RE projects, the new RE Service/Operating Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.

The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.

Any investment added to existing RE projects shall be subject to prior approval by the DOE.

(2) ***DOE Certificate of Accreditation*** — issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.

B. *Registration with the Board of Investments (BOI)*

> The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.
>
> **To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, <u>RE Developers</u> and manufacturers, fabricators, and suppliers of locally-produced RE equipment, <u>shall register with the BOI</u>.**
>
> The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.
>
> C. *Certificate of Endorsement by the DOE*
>
> **<u>RE Developers</u>, and manufacturers, fabricators, and suppliers of locally- produced RE equipment shall be qualified to avail of the incentives provided for in the Act <u>only after securing a Certificate of Endorsement from the DOE</u>, through the REMB, on a per transaction basis.**
>
> The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; *Provided,* That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR."

(Emphasis and underscoring, Ours.)

As required by the foregoing provisions, the following documents must be secured by a RE Developer in order to qualify for VAT zero-rating, as contemplated under ***RA No. 9513*** and its ***IRR***:

i. DOE Certificate of Registration;
ii. Registration with the BOI; and
iii. Certificate of Endorsement from the DOE on a per transaction basis.

Records show that petitioner was issued a BOI Certificate of Registration (No. 2015-197) on 22 September 2015 stating that it is an RE Developer of solar energy resources.[49] However, no evidence was submitted showing that petitioner was issued a DOE Certificate of Registration or a

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[49] Exhibit "P-2", Division Records Vol. 1, p. 24.

Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis. The absence of these two (2) documents is fatal to petitioner's cause.

Petitioner also claims that it qualifies as a generation company under the ***EPIRA Law*** engaged in zero-rated sales under ***R.A. No. 9337***. However, petitioner did not present any evidence to support such claim despite being given ample opportunity to present its evidence. Mere allegation is not synonymous with proof or evidence.[50] In the absence of proof, the Court is constrained to rule that petitioner failed to establish that it is engaged in zero-rated sales.

<u>Petitioner failed to establish that the unutilized input VAT are attributable to zero-rated sales.</u>

Petitioner also failed to comply with the *third requisite* which requires that the input VAT must be attributable to zero-rated sales.

An examination of petitioners Quarterly VAT Returns for the 4th Quarter of 2015[51] would show that petitioner declared no zero-rated sales against which the claimed input VAT may be attributed. In fact, petitioner reflected no sales in its Quarterly VAT Return during the 4th quarter of taxable year 2015.

It is incumbent upon petitioner to prove that it actually generated sales from its sale of renewable energy for the subject period of claim, i.e. 4th quarter of taxable year 2015, through the presentation of the Quarterly VAT Return for the relevant taxable period reflecting zero-rated sales, duly substantiated by VAT official receipts which contain all the necessary information pursuant to ***Section 113 of the Tax Code*** as implemented by ***Section 4.113-1 of Revenue Regulations No. 16-2005 (Consolidated VAT Regulations)***, which provide:

> "Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons. -
>
> (A) Invoicing Requirements. - A **VAT-registered person shall**, for **every sale**, issue an invoice or receipt. In addition to the information required under Section 237, the **following information shall be indicated in the invoice or receipt**:

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[50] Malixi v. Mexicali Philippines, G.R. No. 205061, 8 June 2016; Belga, Jr. v. Everest Security and Investigation Agency, G.R. No. 244324, 17 June 2019; Commissioner of Internal Revenue v. CBK Power Company Limited, G.R. No. 252993, 21 September 2020.

[51] Exhibit "P-16", Division Records Vol. 1, pp. 71-73. Exhibit "R-2", BIR Records, pp. 43-45.

(1) A **statement that the seller is a VAT-registered person**, followed by his taxpayer's identification number **(TIN)**; and

(2) The **total amount which the purchaser pays or is obligated to pay** to the seller with the indication that such amount includes the value-added tax.

(B) Accounting Requirements. - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance."

"SECTION 4.113-1. Invoicing Requirements. —

(A) A **VAT-registered person shall issue**: —

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A **VAT official receipt for every** lease of goods or properties, and for every **sale**, barter or exchange of **services**.

Only VAT-registered persons are required to **print their TIN followed by the word "VAT"** in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

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(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the **sale is subject to zero percent (0%)** VAT, the **term "zero-rated sale" shall be written or printed prominently on the invoice or receipt**;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

(Emphasis, Ours.)

Considering that petitioner declared no zero-rated sales in its Quarterly VAT Return for the 4th quarter of taxable year 2015, petitioner also did not submit in evidence any corresponding VAT official receipts. Clearly, petitioner had no zero-rated sales against which its alleged input VAT can be attributed.

In ***Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue***,[52] the Supreme Court emphasized the importance of the substantiation of zero-rated sales such that when a VAT-taxpayer claims to have zero-rated sale of services, it must substantiate the same through valid VAT official receipts, not any other document, not even a sales invoice, which properly pertains to a sale of goods or properties.

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[52] G.R. No. 191495, 23 July 2018.

While petitioner is correct in stating that the sales and input VAT may be in different periods, it is crucial, however, that the presence of zero-rated sales be established for the relevant period of claim, which is the 4th quarter of taxable year 2015 in the present case. The requirement is that there should be zero-rated sales during the period of the claim against which the input VAT can be attributed. Stated otherwise, the relevant taxable year is the year when the zero-rated sales are earned, regardless of when the input VAT were incurred.

In ***Luzon Hydro Corporation v. Commissioner of Internal Revenue***,[53] the Supreme Court emphasized the importance of establishing the existence of zero-rated sales on the part of the taxpayer-applicant to obtain a credit/ refund of input VAT in this wise:

> "The petitioner did not competently establish its claim for refund or tax credit. We agree with the CTA *En Banc* that the **petitioner did not produce evidence showing that it had zero-rated sales for the four quarters of taxable year 2001.** As the CTA *En Banc* precisely found, the **petitioner did not reflect any zero-rated sales from its power generation in its four quarterly VAT returns, which indicated that it had not made any sale of electricity.** Had there been zero-rated sales, it would have reported them in the returns. Indeed, **it carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned, or in the de novo litigation before the CTA in Division**.
>
> Although the petitioner has correctly contended here that the sale of electricity by a power generation company like it should be subject to zero-rated VAT under Republic Act No. 9136, its assertion that it need not prove its having actually made zero-rated sales of electricity by presenting the VAT official receipts and VAT returns cannot be upheld. It ought to be reminded that it could not be permitted to substitute such vital and material documents with secondary evidence like financial statements."
> (Emphasis, Ours.)

It is crucial for petitioner to establish the existence of zero-rated sales during the 4th quarter of taxable year 2015. Petitioner's failure to submit proof that it had zero-rated sales during said period against which the claimed input VAT may be attributed is likewise fatal to its claim.

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[53] G.R. No. 188260, 13 November 2013.

<u>Petitioner failed to prove that the input tax has not been applied against output tax.</u>

Neither did petitioner prove compliance with the *fourth requisite* requiring that the claimed unutilized input VAT has not been applied against the output tax.

Records are bereft of any indication that petitioner submitted in evidence any proof that would establish that the claimed unutilized input VAT has not yet been applied against the output tax.

All told, for petitioner's failure to comply with the 2nd, 3rd, and 4th requisites, the Court is constrained to deny its claim for unutilized input VAT for the 4th quarter of taxable year 2015.

<u>The alleged partial disallowance of the claim did not establish petitioner's compliance with the substantiation requirements of the BIR.</u>

The Court also finds no merit in petitioner's contention that the BIR Regional Director's purported letter marked as Exhibit "P-57" which allegedly disallowed only a portion of the VAT refund claim proves that petitioner was able to comply with the substantiation requirements of the BIR for the following reasons:

First, Exhibit "P-57" was denied admissibility for its failure to having been identified. Hence, this cannot be considered in the resolution of the present Petition.

Second, even assuming Exhibit "P-57" was admitted in evidence, and thus can be considered in the resolution of the present Petition, the purported letter from the Regional Director dated 8 December 2017 has been overturned by the CIR's Decision, dated 22 January 2018, where respondent denied the entire refund claim. This was further established during the re-direct examination questions propounded to respondent's witness, Revenue Officer Dexter Bustillos, who testified as follows:[54]

> Atty. Matanog: Redirect, Your Honors. Mr. Witness, who has the final authority in denying or granting a claim for refund?

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[54] *See* Transcript of Stenographic Notes for the hearing held on 29 January 2019, p. 17.

Witness:	Assistant Commissioner of Internal Revenue.
Q:	Of the assessment service?
A:	The assessment service.
Q:	So that the findings of the Regional Offices are merely recommendatory in nature and subject to his or her final revenue, is that correct?
A:	Yes.

On a final note, tax refunds or tax credits, just like tax exemptions, are strictly construed against the taxpayers, the latter having the burden to prove compliance with the conditions for the grant of the tax refund or credit.[55]

WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by petitioner YH Green Energy Incorporated is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[55] Sitel Philippines Corp. v. Commissioner of Internal Revenue, G.R. No. 201326, 8 February 2017 *citing* Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation), G.R. No. 180434, 20 January 2016.

A T T E S T A T I O N

I attest 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.

ERLINDA P. UY
Associate Justice
Chairperson

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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