REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

EDC BURGOS WIND POWER CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2548
(CTA Case No. 9446)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JUN 0 2 2023 11:45am

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DECISION

MANAHAN, *J.*:

Before the Court of Tax Appeals *En Banc* is a Petition for Review filed by petitioner EDC Burgos Wind Power Corporation on December 20, 2021 seeking the reversal of the Decision dated March 12, 2021 (assailed Decision) and the Resolution dated October 28, 2021 (assailed Resolution) of the Court's Third Division (Court in Division) in CTA Case No. 9446 entitled *EDC Burgos Wind Power Corporation vs. Commissioner of Internal Revenue.*

The dispositive portions of the assailed Decision and Resolution are quoted hereunder:

Decision dated March 12, 2021

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

Assailed Resolution dated October 28, 2021

> "**WHEREFORE**, premises considered, Petitioner's Motion for Reconsideration (Re: Decision Dated March 12, 2021) is **DENIED** for lack of merit."
>
> **SO ORDERED.**"

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines and is duly registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 007-726-294-000.

Respondent is the duly appointed Commisioner of Internal Revenue (CIR), vested with the authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia,* the power to decide, approve, and grant claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

The antecedent facts as narrated by the Court in Division are as follows :

> "On March 30, 2016, Petitioner filed with the BIR an Application for Tax Credits/Refunds (BIR Form No. 1914) and cover letter evenly dated, requesting for the refund of or issuance of tax credit certificate for its alleged excess and unutilized input VAT amounting to ₱33,903,404.70, for the period covering January 1, 2014 to June 30, 2014.
>
> On July 19, 2016, Petitioner received the Letter of Authority (LOA) No. LOA-121-2016-000000020 from the BIR-Large Taxpayers Excise Audit Division I, authorizing the

examination of its books of accounts and other accounting records for VAT for the 1st and 2nd quarters of CY 2014.

Thereafter, on July 27, 2016, Petitioner received the letter dated July 20, 2016 from Mr. Nestor S. Valeroso, Assistant Commissioner for Large Taxpayers Service of the BIR, denying Petitioner's administrative claim for refund.

Petitioner filed the instant Petition for Review on August 20, 2016. This case was initially raffled to the Court's First Division.

After the extensions given by the Court, Respondent filed his Answer on February 13, 2017, interposing the following special and affirmative defenses, to wit:

xxx xxx xxx

The Pre-Trial Conference was initially scheduled on May 11, 2017. However, upon the filing of Respondent's Urgent Motion To Reset Hearing on May 10, 2017, the Pre-Trial Conference was reset to June 28, 2017. At the hearing held on this latter date, the Court cancelled the pre-trial; and reset and held the same on August 2, 2017.

In the meantime, Petitioner's Pre-rial Brief and Petitioner's Amended Pre-Trial Brief were submitted on May 8, 2017 and June 23, 2017, respectively; while Respondent's Pre-Trial Brief was filed on June 29, 2017.

The parties then submitted their Joint Stipulation of Facts and Issues (JSFI) on September 11, 2017. In the Resolution dated September 26, 2017, the Court approved the said JSFI and deemed the termination of the Pre-Trial.

Respondent transmitted the BIR Records to the Court on January 9, 2018.

Thereafter, the Court issued the Pre-Trial Order dated January 15, 2018.

Trial ensued.

During trial, Petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Charles Remy Capaque, Tax Compliance Officer of the Energy Development Corporation; and (2) Mr. Reman A. Chua, Petitioner's Vice-President.

Petitioner filed its Formal Offer of Evidence (With Motion to Set Commissioner's Hearing) on July 30, 2018. Respondent then submitted his Comment (Re: Petitioner's Formal Offer of Evidence) on August 3, 2018.

Pursuant to the Order dated September 21, 2018, this case was transferred to this Court's Third Division.

In the Resolution dated March 6, 2019, the Court admitted Petitioner's documentary exhibits, *except* for Exhibits "P-132" and "P-133", for failure to identify the same.

Petitioner then filed a Motion for Reconsideration (Re: Resolution dated March 11, 2019) (With Motion for Leave to Recall Witness and Present Additional Evidence), praying that the Court (1) reconsider its Resolution dated March 11, 2019; and (2) set a hearing for the recall of Petitioner's witness, Mr. Capaque, for the identification of Petitioner's Exhibits "P-132" and "P-133" and the presentation of additional evidence. Respondent failed to file his comment on the said Motion for Reconsideration. In the Resolution dated June 17, 2019, the Court granted Petitioner's Motion for Leave to Recall Witness and Present Additional Evidence, and held in abeyance the resolution of Petitioner's Motion for Reconsideration (Re: Resolution dated March 11, 2019).

Thereafter, Petitioner recalled to the witness stand Mr. Capaque, who testified in full. On August 23, 2019, Petitioner filed its Supplemental Formal Offer of Evidence. In the Resolution dated September 26, 2019, the Court granted Petitioner's Motion for Reconsideration (Re: Resolution dated March 11, 2019), and admitted Exhibit's *(sic)* "P-132" and "P-133", as well as the other Exhibits stated in its Supplemental Formal Offer of Evidence.

Respondent also presented his testimonial and documentary evidence. Respondent proffered the testimony of his lone witness, Mr. Cletofel Parungao, a Revenue Officer of the BIR.

On November 18, 2019, Respondent filed his Formal Offer of Evidence. Petitioner then filed its Comment (To Respondent's Formal Offer of Evidence) on December 16, 2019. In the Resolution dated February 4, 2020, the Court admitted Respondent's Exhibits and gave the parties thirty (30) days from receipt thereof to file their respective memoranda.

Respondent filed his Memorandum on March 9, 2020, while Petitioner submitted its Memorandum on July 1, 2020.

The instant case was deemed submitted for decision on July 13, 2020."

The Court in Division promulgated a Decision on March 12, 2021 in CTA Case No. 9446 denying the claim for refund of petitioner in the amount of Php33,903,404.70.

Aggrieved with the decision of the Court in Division, Petitioner filed a Motion for Reconsideration (Re: Decision Dated March 12, 2021) on June 4, 2021. Respondent filed his Opposition on June 25, 2021.

A Resolution was issued by the Court in Division on October 28, 2021 denying petitioner's Motion for Reconsideration.

On November 18, 2021, petitioner received the assailed Resolution denying his Motion for Reconsideration.

On December 3, 2021, petitioner filed a Motion for Extension of Time to File Petition for Review.

On December 20, 2021, petitioner filed a Petition for Review with the Court *En Banc* docketed as CTA *EB* No. 2548 entitled *EDC Burgos Wind Power Corporation* vs. *Commissioner of Internal Revenue.*[1]

On March 16, 2022, the Court issued a Resolution directing respondent to file his comment to the Petition for Review, within ten (10) days from notice.[2]

On April 1, 2022, respondent filed his Comment (Re: Petition for Review).[3]

In a Resolution dated May 4, 2022, the instant case was deemed submitted for decision.[4]

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[1] EB Docket, pp. 6-49.
[2] EB Docket, pp. 95-96.
[3] EB docket, pp. 97-102.
[4] EB Docket, pp.105-106.

THE ISSUES

Petitioner raises the following arguments in support of its Petition for Review:

1. That it has directly and sufficiently addressed in pleadings filed and evidence presented before the CTA-Division, the reason for respondent's denial of its administrative claim for refund for the resolution of the Court *En Banc:* and
2. The Certificate of Compliance (COC) issued by the Energy Regulatory Commission (ERC) is not a requirement for the petitioner's entitlement to VAT zero-rating privilege. The Tax Code, Revenue Regulations (RR) No. 16-2005 and Republic Act (RA) No. 9513 or the Renewable Energy (RE) Law provide that the sale of power through renewable sources of energy shall automatically be subject to zero percent (0%) value-added tax (VAT), without any prior COC requirement.

Petitioner's Arguments

The first argument of petitioner pertains to the reasons adduced by respondent in denying the former's claim for refund in the administrative level, i.e., that no zero-rated sales were made during the taxable quarter, [hence] there is no creditable input value-added tax attributable to such zero-rated sales." Petitioner finds the ground cited by respondent in denying its entire claim for refund, erroneous and argues that there is no requirement under the 1997 National Internal Revenue Code (NIRC), as amended, that the input VAT being claimed must have been incurred at the time of the sale of the renewable energy. Petitioner avers that what the law requires is that the input tax be merely attributable to zero-rated sales, regardless of when the sales were made. This, petitioner asserts, was clearly addressed in its pleadings and the evidence it offered during trial in the Court in Division justifying a grant of its entire claim for refund for the first and second quarters of calendar year 2014.

To address the actual reason for the denial of its claim for refund by the Court in Division, petitioner maintains that the COC from the ERC is not a requirement to obtain a VAT zero-rating on the sales made during the period covered by its claim for refund. Petitioner asserts that its claim for refund or issuance of a tax credit certificate is anchored on Section 15 (g)

of the RA No. 9513 or the RE Law and its implementing regulations and on Section 108 (B) (7) of the 1997 NIRC, as amended, and that there is nothing in these provisions that a COC is necessary for the sales to be considered as VAT zero-rated. It submits that the Court's reliance on Section 4.108-3 (f) of RR No. 16-2005 is misplaced because the provisions therein refer to sale of electricity by generation companies which are subject to the twelve percent (12%) VAT. It contends that the applicable provision is found in Section 4.108-5 (b) (7) of RR No.16-2005 which refers to transactions subject to zero percent (0%) VAT rate including among others, the sale of power or fuel generated through renewable sources of energy.

Petitioner opposes the application of RA No. 9136 or "*An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and For Other Purposes*" otherwise known as the EPIRA law to the instant case. In simple terms, petitioner argues that EPIRA law should be applied only when the claim is grounded on the latter law and not when the basis is the RE law as in the instant case.

Respondent's Counter-Arguments to the Petition for Review

Respondent anchors its arguments on the decision of the Supreme Court in the case of *Pilipinas Total Gas, Inc., vs. Commissioner of Internal Revenue*[5] wherein it was supposedly ruled that a taxpayer appealing a denial of its claim in the administrative level with the Court, is bound to show by convincing evidence that respondent had no reason to deny its claim and that it has satisfied all the documentary and evidentiary requirements for an administrative claim for refund to prosper. Respondent alleges that petitioner presented its case before the Court in Division as if it was an original one and that the administrative claim was never acted upon. Respondent emphasizes that that there was a denial of the claim for refund in the instant case in the administrative level and that petitioner failed to specifically assail and address the reasons for said denial before the Court. In the mind of respondent, this oversight on the part of petitioner is fatal to the judicial claim for refund.

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[5] G.R. No. 207112, December 8, 2015.

THE RULING OF THE COURT *EN BANC*

We first determine the timeliness of the appeal made by petitioner with the Court *En Banc.*

Records show that petitioner received the assailed Resolution (denying its Motion for Reconsideration) dated October 28, 2021 on November 18, 2021.[6]

On December 3, 2021, petitioner filed a Motion for Extension of Time to File Petition for Review[7] requesting that it be given an additional period of fifteen (15) days from December 3, 2021 or until December 18, 2021 within which to file its Petition for Review with the Court *En Banc.*

On December 9, 2021, the Court *En Banc* granted petitioner's Motion or Extension of Time and gave it until December 18, 2021 to file its Petition for Review.

Considering that December 18, 2021 is a Saturday, the filing of its Petition for Review on December 20, 2021, the next working day, was within the extended period allowed by the Court, hence, timely filed.

In reaching the conclusion to deny the entire claim for refund, the Court in Division in the assailed Decision first provided the requisites for the grant of refund of alleged excess input VAT based on the relevant provisions of the law and analyzed whether petitioner successfully fulfilled the same.

We subscribe to the requisites and parameters used by the Court in Division in determining the merits of the instant claim for refund as they are based on the relevant provisions of law and applicable jurisprudence.

The claim for refund is based on Sections 112 and 108 (B) of the 1997 NIRC, as amended, which provide, in part, as follows:

> "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

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[6] EB Docket, page 82.
[7] EB Docket, pp. 1-3.

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 of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

"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**:

(1) Processing, manufacturing or repacking goods for other persons doing business outside of the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services. Are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance wuth the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(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;"

(4) Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof;

(5) Services performed by subcontractors and/or contractors in processing, converting or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production.

(6) Transport of passengers and cargo by air or sea vessels from the Philippines to a foreign country, and

(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." (Emphasis supplied)

Based on the foregoing provisions, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of excess and/or unutilized input VAT. Said requisites may be classified into the following categories:

Timeliness of the filing of the administrative and judicial claims:

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[8]

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[8] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue* G.R. No. 182364, August 3, 2010.

2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;

Taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[9]

Taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[10]

5. for zero-rated sales under Section 108(B)(7) of the 1997 NIRC, as amended, the sale of power or the sale of fuel is generated or produced from renewable sources of energy;

Taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[11]

7. the input taxes are due or paid;[12]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[13] and,

9. the input taxes have not been applied against output taxes during and in the succeeding

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[9] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*
[13] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

quarters.[14]

It must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[15] Thus, it behooves petitioner to show compliance with each of the foregoing requisites. Any absence of *any* one of the said requisites constitutes a valid ground to deny the refund claim.

It is at this point, that this Court, *a quo*, expresses its disagreement with respondent's argument in his Comment that petitioner failed to specifically assail and address the reasons for said denial before the Court. On the contrary, the records show that petitioner submitted pleadings and offered both testimonial and documentary evidence in Court to prove its claim for refund. To suggest that the arguments and evidence to be offered by petitioner should be limited to countering the reasons adduced by the Bureau of Internal Revenue (BIR) in the administrative level is to espouse a myopic view of the role of the Court over appeals filed from a decision of the CIR or its representatives. To reiterate, the Court of Tax Appeals as a court of record has the authority to determine issues raised by the parties even if these were not raised in the administrative level to achieve a judicious and orderly administration of justice.

In the case of *CIR vs. Univation Motor Phils., Inc.,*[16] the Supreme Court acknowledged that the cases filed in the CTA are litigated *de novo*, when it ruled, thus:

> "The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. **The claimant may present new and additional evidence to the CTA to support its case for tax refund.**

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[14] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue*, supra.

[15] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue*, etseq., G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[16] G.R. No. 231581, April 10, 2019.

> Cases filed in the CTA are litigated *de novo* and as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting xxx to the Court of Tax Appeals all evidence xxx required for the successful prosecution of its administrative claim.' **Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance**." (Emphasis supplied)

Let us now proceed to the substantive merits of the Petition for Review.

An astute re-evaluation of the evidence presented by petitioner in the context of the above requisites discloses that although it complied with the other aforementioned requisites, it failed to establish that the declared sales/receipts for the subject period qualify for VAT zero-rating and this is due to the failure to present a COC issued by the ERC, as observed by the Court in Division.

In its Petition for Review with the Court *En Banc*, petitioner disagrees with the findings of this Court and argues that securing a COC from the ERC prior to its sales of power or electricity is not necessary.

We find petitioner's contentions to be without merit and we hold, instead, that a COC is **required** to prove that its sale of power generated or produced from renewable sources of energy qualifies as VAT zero-rated sales or effectively zero-rated sales.

Section 15(g) of RA No. 9513[17] reads as follows:

> "CHAPTER VII
> GENERAL INCENTIVES
>
> SEC. 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

[17] AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES, December 16, 2008.

> (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."

Based on the foregoing provision, it is clear, *inter alia*, that the sale of fuel or power generated from renewable sources of energy, is subject to the zero percent (0%) VAT rate, pursuant to Section 108(B)(7) of the 1997 NIRC, as amended by RA No. 9337 and that such incentive pertains to RE developers of renewable energy facilities, as duly certified by the Department of Energy (DOE), in consultation with the Board of Investments (BOI).

Sections 25 and 26 of RA No. 9513 provide as follows:

> "SEC. 25. *Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment.* – **RE Developers** and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment **shall register with the Department of Energy, through 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 **to serve as the basis of their entitlement to incentives** provided under Chapter VII of this Act.
>
> SEC. 26. *Certificate from the Department of Energy.* – **All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through Renewable Energy Management Bureau**.
>
> The Department of Energy, through the Renewable Energy Management Bureau, shall issue said certification fifteen (15) days upon request of the renewable energy developer or manufacturer, fabricator or supplier: *Provided,*

> **That the certification issued by the Department of Energy shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned.**" *(Emphases supplied)*

To implement the foregoing provisions, Section 18 (under Part III, Rule 5) of DOE Circular No. DC2009-05-0008, otherwise known as the *Implementing Rules and Regulations (IRR) of RA No. 9513*, provides as follows:

> "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 shall pre-terminate and replace the existing Service 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, RE Developers,** and manufacturers, fabricators, and suppliers of locally-produced RE equipment, **shall register with the BOI**.
>
> 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*
>
> **RE Developers**, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, 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**.
>
> xxx xxx xxx."
> *(Emphasis supplied)*

On the basis of the foregoing provisions, to avail of the incentive of VAT zero-rating on the sale of fuel or power generated from renewable sources of energy, including biomass, all certifications must be obtained by the concerned RE Developer from the DOE, through its Renewable Energy Management Bureau. Moreover, it is likewise clear that the issuance of the certification issued by the DOE in favor of any RE developer is still "*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.*"

As can be gleaned from Section 15(g) of RA No. 9513, the VAT zero-rating being granted to RE developer is with reference to the 1997 NIRC, as amended by RA No. 9337. Specifically, the provision being referred to is Section 108(B)(7) of the 1997 NIRC, as amended, which provides 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:

xxx xxx xxx

(7) **Sale of power or fuel generated through renewable sources of energy such as, but not limited to,** biomass, solar, **wind**, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels." *(Emphasis and underscoring supplied)*

To implement the foregoing provision, Sections 4.108-3(f) and 4.108-5(b)(7) of RR No. 16-2005[18] provide as follows:

"SEC. 4.108-3. *Definitions and Specifics Rules on Selected Services.* –

xxx xxx xxx

(f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10%[19] VAT on their gross receipts; *Provided*, **That sale of power or fuel generated through renewable sources of energy such as, but not limited to**, biomass, solar, **wind**, hydropower, geothermal, ocean energy, and other emerging energy 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 RA No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.

xxx xxx xxx."

SEC. 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

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[18] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

> -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. *(Emphases and underscoring added)*

The above provisions must be linked to RA No. 9136 where it clearly provides that for a sale of power generated through renewable sources of energy to be considered as a VAT zero-rated sale under Section 108 (B) (7) of the 1997 NIRC, as amended, the said generation company must be so authorized by the ERC to operate facilities used in the generation of electricity.

Section 6 of the EPIRA Law provides as follows:

> "SEC. 6. *Generation Sector.* – Generation of electric power, a business affected with public interest, shall be competitive and open.
>
> **Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act,** as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> xxx xxx xxx
>
> Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value-added tax zero-rated." (Emphasis supplied)

Considering that the petitioner is into power generation, then the requisites of the EPIRA law, i.e., COC, must also be complied with.

It is clear from the foregoing provisions that power generation companies must secure a COC from the ERC prior to its operations to categorize the corresponding sales as VAT

zero-rated as correctly ruled by the Court in Division. Simply put, a renewable energy developer which generates power and sells the same is required to secure a COC from the ERC.

As observed by the Court in Division that while petitioner was able to secure a COC from the ERC in its favor, the "same was issued only on April 13, 2015, or *after* the commencement of its commercial operation on November 11, 2014."

Having ruled on the necessity of the COC to qualify the sales of power as zero-rated sales, this Court would like to stress that a Certificate of Endorsement (COE) from the DOE, unlike the COC, does not bear the same indispensable character in order to be entitled to VAT zero-rate, contrary to the ruling of the Court in Division.

We discuss.

Section 15 (b) of RA No. 9513 provides for another important incentive granted to RE developers and that is the duty-free importation of RE machinery, equipment and materials, and we quote:

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

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

It is clear from the foregoing provision that an endorsement from the DOE is a requirement before an RE developer may avail of the duty-free importation of RE machinery, equipment, materials and parts. This Court observes, however, that such a requirement is not mentioned under the earlier quoted Section 15 (g) of RA No. 9513 or the incentive of an RE developer to zero-rated sales. We again quote for clarity, thus:

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

This Court thus concludes that a COE issued by the DOE is required only for the duty-free importation of RE machinery,

equipment and materials and not for the availment of the VAT zero-rating incentive on its sales.

WHEREFORE, premises considered, the Petition for Review is **DENIED**.

Accordingly, the Decision dated March 12, 2021 and the Resolution dated October 28, 2021 of the Court in Division are **AFFIRMED** with **MODIFICATION** as to the requirement of securing a COE from the DOE is concerned.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join the Dissenting Opinion of Presiding Justice Del Rosario)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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

(With due respect, I join the Dissenting Opinion
of Presiding Justice Del Rosario)
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

EDC BURGOS WIND POWER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2548
(CTA Case No. 9446)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, *JJ.*

Promulgated:

JUN 02 2023 11:45am

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent on the *ponencia* which denies the Petition for Review filed by EDC Burgos Wind Power Corporation; and, affirms the Decision dated March 12, 2021 and the Resolution dated October 28, 2021 of the Court in Division with modification as to the requirement of securing a Certificate of Endorsement (COE) from the Department of Energy (DOE) is concerned.

The *ponencia* opines that the petitioner is required to secure a Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC) to prove that its sale of power generated or produced from renewable sources of energy qualifies as value-added tax (VAT) zero-rated sales or effectively zero-rated sales. This requirement is provided for under Section 6 of Republic Act (RA) No. 9136 or the Electric Power Industry Reform Act (EPIRA) of 2001.

A perusal of the records, however, shows that petitioner's VAT refund claim is anchored on **Section 15(g) of RA No. 9513 (Renewable Energy Law), in relation to Section 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended.**[1]

Petitioner need not comply with the requirements under the EPIRA, particularly to secure a COC from the ERC, because its VAT refund claim is anchored on Section 15(g) of RA 9513, in relation to Section 108(B)(7) of the **NIRC** of 1997, as amended, and not on the EPIRA. **Truth to tell, in both its administrative claim[2] filed with the BIR and its judicial claim[3] filed before this Court, petitioner makes no reference to any provision of the EPIRA in invoking its entitlement to VAT zero-rating.**

In *Team Energy Corporation (formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue*[4] *(Team Energy 2018)* and *Commissioner of Internal Revenue vs. Team Energy Corporation (formerly Mirant Pagbilao Corporation)*[5] *(Team Energy 2019)*, the Supreme Court has made a distinction between a claim for refund of input VAT under the EPIRA and that made under the NIRC of 1997, as amended, insofar as the EPIRA requirement of securing a COC from the ERC is concerned, *viz.*:

> **Team Energy 2018**
>
> "**Indeed, the requirements of the EPIRA law would apply to claims for refund filed under the EPIRA.** In such case, the taxpayer must prove that it has been duly authorized by the ERC to operate a generation facility and that it derives its sales from power generation. This was the thrust of this Court's ruling in *Commissioner of Internal Revenue v. Toledo Power Company (TPC).*
>
> xxx xxx xxx
>
> **Here, considering that Team Energy's refund claim is premised on Section 108(B)(3) of the 1997 NIRC, in relation to NPC's charter, the requirements under the EPIRA are inapplicable. To qualify its electricity sale to NPC as zero-rated, Team Energy needs only to show that it is a VAT-registered entity and that it has complied with the invoicing requirements under Section 108(B)(3) of the 1997 NIRC, in conjunction with Section 4.108-1 of Revenue Regulations No. 7-95.**" *(Emphasis supplied)*

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[1] V. Legal Basis, Petition for Review, CTA Case No. 9446, Docket Vol. I, pp. 14-15.
[2] Exhibit "P-28", CTA Case No. 9446, Docket Vol. III, pp. 1124-1125.
[3] Petition for Review, CTA Case No. 9446, Docket Vol. I, pp. 10-19.
[4] G.R. No. 197663, March 14, 2018.
[5] G.R. No. 230412, March 27, 2019.

Team Energy 2019

"Petitioner was less than truthful when he lifted only portions of the CTA Decision in Toledo that were favorable to him. In the said case, while it may be true that the CTA ruled that the failure of Toledo to submit its approved COC from the ERC cannot qualify its sales of generated power for VAT zero-rating under the EPIRA, **the same decision likewise granted Toledo's claim for refund of unutilized input VAT attributable to its sales of electricity to NPC under Section 108(B)(3) of the Tax Code. In short, the decision differentiated the requirements for a claim for refund under the EPIRA, and a claim for refund based on Section 108(B)(3) of the Tax Code**. In Commissioner of Internal Revenue v. Toledo Power Company which affirmed the said CTA decision, this Court essentially held that **the requirements of the EPIRA must be complied with only if the claim for refund is based on EPIRA.** xxx

In the recent case of Team Energy Corporation v. Commissioner of Internal Revenue, **the Court likewise rejected the contention of the CIR that Team Energy is not entitled to tax refund or tax credit because it cannot qualify for VAT zero-rating for its failure to submit its ERC Registration and COC required under the EPIRA.** In this case, the Court ruled:

> **Here, considering that Team Energy's refund claim is premised on Section 108(B)(3) of the 1997 NIRC, in relation to NPC's charter, the requirements under the EPIRA are inapplicable.** To qualify its electricity sale to NPC as zero-rated, Team Energy needs only to show that it is a VAT-registered entity and that it has complied with the invoicing requirements under Section 108(B)(3) of the 1997 NIRC, in conjunction with Section 4,.108-1 of Revenue Regulations No. 7-95.

Given that respondent in this case likewise anchors its claim for tax refund or tax credit under Section 108(B)(3) of the Tax Code, it cannot be required to comply with the requirements under the EPIRA before its sale of generated power to NPC should qualify for VAT zero-rating. Section 108(B)(3) of the Tax Code in relation to Section 13 of the NPC Charter, clearly provide that sale of electricity to NPC is effectively zero-rated for VAT purposes." *(Emphasis supplied)*

Based on the aforequoted pronouncements, where the zero-rated VAT incentive invoked is not based on the EPIRA, the taxpayer-claimant need not comply with the requirements under the EPIRA, particularly to secure a COC from the ERC, to be entitled to VAT zero-rating on the sale of power or fuel generated through renewable sources of energy.

Accordingly, the requirement to submit a COC from the ERC is only a condition for availing the VAT zero-rating incentive on claims for refund based on the EPIRA.

Since the subject claim for refund of input VAT attributable to zero-rated sales is based on Section 15(g) of RA No. 9513, in relation to Section 108(B)(7) of the NIRC of 1997, as amended, petitioner, as a Renewable Energy Developer, needs only to show that it has complied with the conditions laid down under RA No. 9513 and its IRR[6] in order to avail of the VAT zero-rating incentive.

All told, I VOTE for the Court *En Banc* to: *(i)* **GRANT** the Petition for Review filed by EDC Burgos Wind Power Corporation; *(ii)* **REVERSE** and **SET ASIDE** the assailed Decision dated March 12, 2021 and Resolution dated October 28, 2021 in CTA Case No. 9446; and, *(iii)* **REMAND** the case to the Court in Division for determination of the refund due to petitioner, if any.

ROMAN G. DEL ROSARIO
Presiding Justice

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[6] Department of Energy Department Circular No. DC2009-05-0008.