REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NORTH LUZON RENEWABLE ENERGY CORP.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2574
(CTA Case No. 9886)

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

Promulgated:
JUN 0 1 2023 4:20 pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review* filed by petitioner North Luzon Renewable Energy Corp.[1] ("**Petitioner**" or "**NLREC**"), under Section 3(b), Rule 8,[2] in relation to Section 2(a)(1), Rule 4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**"), assailing the *Decision* dated 19 February

[1] Dated 8 March 2022, received by the Court on 8 March 2022; *Rollo*, pp. 1-28.
[2] *Section 3. Who May Appeal; Period to File Petition.* — (a) x x
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a *petition for review* within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the *petition for review*.
[3] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.
[4] A.M. No. 05-11-07-CTA.

2021[5] ("**assailed Decision**"), and *Resolution* dated 6 September 2021[6] ("**assailed Resolution**") of this Court's Third Division ("**Court in Division**") in CTA Case No. 9886 entitled *North Luzon Renewable Energy Corp. vs. Commissioner of Internal Revenue.*

THE PARTIES

Petitioner NLREC is a domestic corporation organized and existing under the laws of the Philippines and is licensed by the Securities and Exchange Commission ("**SEC**") under SEC License No. CS200608482.[7] It is primarily engaged in the business of generation and distribution of energy from renewable sources, specifically through the operation of the 81MW Wind farm facility located at Barangay Caparispisan, Pagudpud, Ilocos Norte.[8]

Petitioner is likewise registered as a Renewable Energy ("**RE**") Developer with the Department of Energy ("**DOE**") under DOE Certificate of Registration No. WESC-2009-09-005-A[9] and WESC-2009-09-005[10] issued under Republic Act ("**RA**") No. 9513, otherwise known as the "Renewable Energy Act of 2008" ("**RE Act**"). It is also registered with the Board of Investments ("**BOI**") under BOI Certificate of Registration No. 2011-028.[11]

Petitioner is registered with the Bureau of Internal Revenue ("**BIR**") under Certificate of Registration No. OCN 4RC0000801084, with Tax Identification No. 245-726-106-000. It is a VAT-registered taxpayer. [12]

Respondent is the Commissioner of Internal Revenue ("**CIR**"), with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code ("**NIRC**"), or other laws or portions thereof administered by the BIR.[13] He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

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[5] *Rollo*, pp. 42-63; penned by Associate Justice Erlinda P. Uy, with Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro, concurring.
[6] *Id.*, pp. 34-40.
[7] Annex "P-2", Rollo, p. 64.
[8] Rollo, p. 66.
[9] Annex "P-4", Rollo, p. 81.
[10] Annex "P-3", Rollo, p. 80.
[11] Annex "P-5", Rollo, p. 82.
[12] Division Docket – Vol. I, p. 158.
[13] Section 4, NIRC, as amended.

THE FACTS

The following are the undisputed facts, as narrated in the assailed *Decision* of the Court in Division, to wit:[14]

> On March 26, 2018, petitioner filed an Administrative Claim for refund of its unutilized input VAT attributable to its zero-rated sales for taxable year 2016 in the total amount of ₱9,276,440.27.
>
> The BIR then issued the assailed VAT Refund/Credit Notice dated May 15, 2018, granting petitioner's refund only to the extent of ₱957,986.03, and disallowed the amount of ₱8,318,454.24, as follows:

A. Local Purchases	
VAT refund claimed	₱ 8,994,524.22
Less: Disallowances	(8,318,454.24)
Net allowable VAT Refund/Credit	₱ 676,069.98
B. Importations	
VAT refund claimed	₱ 281,916.05
Less: Disallowances	-
Net allowable VAT Refund/Credit	₱ 281,916.05
Total allowable for VAT refund/credit	**₱ 957,986.03**

> Petitioner received the VAT Refund/Credit Notice on June 25, 2018.
>
> After that, on June 27, 2018, petitioner filed with respondent the letter evenly dated to clarify its entitlement to the full refund requested.
>
> The instant *Petition for Review* was filed on July 25, 2018.
>
> Respondent filed his Answer on August 29, 2018, interposing the following defenses, to wit: (1) petitioner is not the proper party to claim for any input VAT refund on its purchases; (2) the disallowance in the amount of P8,318,454.24 is proper; and (3) refund claims are construed strictly against the claimant for the same partake the nature of exemption from taxation and [as] such, they are looked upon with disfavor.

[14] *Supra* at note 5.

On 10 September 2018, respondent's Pre-Trial Brief was filed, while on 26 November 2018, petitioner's Pre-Trial Brief was submitted. The Pre-Trial Conference was set and held on 4 December 2018.

On 29 October 2018, petitioner filed a Motion to Admit (attached Comment dated 29 October 2018), praying that the attached Comment (Re: Answer dated 29 August 2018) be noted and made part of the records of this case. In the Resolution dated 8 November 2018, the Motion to Admit was granted by the Court, and the Comment was noted and admitted as part of the record of the case.

The parties filed their Joint Stipulation of Facts and Issues (JSFI) on 28 December 2018, which was approved and admitted on 7 January 2019. On 17 January 2019, the Pre-Trial Order was issued, and the Pre-Trial was deemed terminated.

Petitioner presented the following witnesses during the trial: (1) Atty. Joanne Melanie P. Trinidad-Gemanil, petitioner's Chief Legal and Compliance Officer and Corporate Secretary; and (2) Maclen S. Araojo, its Accounting Officer and Accounting Manager.

On 20 August 2019, a Formal Offer of Evidence (For Petitioner) was filed, to which respondent filed his Comment (Re: Petitioner's Formal Offer of Evidence) on 27 August 2019. In the Resolution dated 26 September 2019, the Court admitted all petitioner's exhibits.

For his part, respondent proffered the testimony of Revenue Officer Leni Grace A. Nodora and filed his Formal Offer of Evidence on 5 December 2019. On 12 December 2019, petitioner filed its Comment/Opposition (Re: Respondent's Formal Offer of Evidence). In the Resolution dated 14 January 2020, all respondent's evidence were admitted, and the parties were ordered to file memoranda within thirty (30) days from notice.

With the filing of respondent's Memorandum on 14 February 2020 and petitioner's Memorandum on 28 February 2020, the case was submitted for decision on 9 March 2020.[15]

On 19 February 2021, the Court in Division issued the assailed *Decision*[16] denying the *Petition.* The dispositive portion of which provides:

[15] Citations omitted.
[16] *Supra* at note 5.

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

In denying the *Petition for Review*, the Court in Division found that petitioner failed to show that the DOE had issued it a Certificate of Endorsement ("**COE**"). As such, the Court in Division ruled that petitioner failed to prove its entitlement to a VAT refund.

Aggrieved, petitioner filed a *Motion for Reconsideration (Re: Decision dated 19 February 2021)* against the assailed *Decision* on 26 March 2021. Respondent's *Opposition (Re: Motion for Reconsideration of the Decision dated 19 February 2021)* was filed on 14 June 2021. Subsequently, petitioner filed a *Motion to Admit -with- Reply (Re: Opposition dated 14 June 2021)* on 19 July 2021.

In a *Resolution* dated 6 September 2021, the Court in Division denied petitioner's *Motion for Reconsideration.* The decretal portion reads:

> **WHEREFORE**, premises considered, the instant ***MOTION FOR RECONSIDERATION (Re: Decision dated 19 February 2021)*** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On 8 March 2022, petitioner filed a *Petition for Review* before the Court *En Banc.*[17]

On 18 April 2022, a *Resolution* was issued requiring respondent to file a comment on the *Petition for Review* within ten (10) days from receipt of the said resolution.[18] Accordingly, respondent filed his *Comment (Re: Petition for Review)* on 25 April 2022.[19]

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[17] *Supra* at note 5.
[18] *Rollo*, pp. 120 to 121.
[19] *Rollo*, pp. 122 to 126.

On 27 May 2022, petitioner filed via registered mail a *Motion to Admit -with- Reply (Re: Comment dated 25 April 2022).*[20] The motion received by the Court on 7 June 2022 was denied in a *Resolution* dated 8 July 2022.

Thus, on 1 June 2022, this Court issued a *Resolution* submitting the *Petition* for decision.[21]

On 5 July 2022, petitioner filed its *Motion to Admit -with- Supplemental Comment,*[22] which was denied in a *Resolution* dated 22 July 2022.[23]

Hence, this *Decision.*

ISSUE

Petitioner forwards the sole issue to be resolved by the Court *En Banc*:

> WHETHER OR NOT THE HONORABLE COURT A QUO GRAVELY ERRED IN DENYING PETITIONER'S CLAIM FOR INPUT VAT REFUND IN THE AMOUNT OF EIGHT MILLION THREE HUNDRED EIGHTEEN THOUSAND FOUR HUNDRED FIFTY-FOUR PESOS AND 24/100 (₱8,318,454.24)

PETITIONER'S ARGUMENTS

Petitioner contends that the Court in Division erred when it failed to consider the nature of the transaction for which the COE issued by the DOE is required.

Petitioner points out that respondent already recognized that it is engaged in zero-rated sales by partially granting its refund claim at the administrative level.[24] Further, it claims that respondent never required the presentation of the COE[25] and that the COE does not apply to RE Developers engaged in generating and selling renewable energy.[26]

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[20] *Rollo*, pp. 131 to 139.
[21] *Rollo*, pp. 129 to 130.
[22] *Rollo*, pp. 142 to 146.
[23] *Rollo*, pp. 158 to 159.
[24] *Petition for Review*, par. 31, *Rollo*, p. 11.
[25] *Id.*, par. 32, *Rollo*, p. 11.
[26] *Id.*, par. 36, *Rollo*, p. 11.

Petitioner argues that the wording of Section 18(A), (B), and (C) of Rule 5, Part III, of the Implementing Rules and Regulations ("**IRR**") of the RE Act is vague and ambiguous insofar as it does not identify the specific transaction it pertains to. It further argues that "any attempt to comply with the provision would only result in absurdity and frustration of the intention of the RE Law,"[27] and its compliance is infeasible.[28]

By way of example, petitioner discussed how spot trade or sale of electricity is being made in the Wholesale Electricity Spot Market ("**WESM**"), which is on an hourly basis to which a COE is impossible to be secured.[29] As such, it posits that RE Developers could not have been contemplated as covered by the said provisions of the IRR.[30] It urges the Court to give a reasonable interpretation of the law.[31]

Petitioner proceeds to argue that the lack of guidelines on the application for COE for transactions other than duty-free importation and disposition of capital equipment supports the conclusion that the COE is only required in transactions where securing a COE is feasible. It cites the DOE Department Circular No. DC2020-02-0005 [32] and the 2021 Citizen Charter.[33]

Further, petitioner avers that it is not required to submit a Certificate of Compliance ("**COC**") issued by the Energy Regulatory Commission ("**ERC**") to avail the fiscal incentives under the RE Act. It contends that the issuance of the COC by the ERC does not equate to entitlement to a zero percent VAT rate but is a requirement under Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (RA No. 9136 or "**EPIRA**") to be considered a generation company.[34] Petitioner cites the case of *Commissioner of Internal Revenue vs. Toledo Power Company*,[35] *Commissioner of Internal Revenue vs. Team Energy Corporation*,[36] and *Team Energy Corporation vs. Commissioner of Internal Revenue*[37] as bases. According to petitioner, since its claim for VAT zero-rating is

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[27] *Id.*, par. 38, *Rollo*, p. 12.
[28] *Id.*, par. 39, *Rollo*, p. 12.
[29] *Id.*, pars. 40-45, *Rollo*, pp. 12-13.
[30] *Id.*, par. 47, *Rollo*, p. 14.
[31] *Id.*, par. 49, *Rollo*, p. 14.
[32] *Id.*, par. 63, *Rollo*, p. 17.
[33] *Id.*, par. 66, *Rollo*, p. 18.
[34] *Id.*, par. 76, *Rollo*, p. 20.
[35] *Id.*, par. 77, *Rollo*, pp. 20-21.
[36] *Id.*, pars. 79-80, *Rollo*, pp. 21-22.
[37] *Id.*, par. 81, *Rollo*, p. 22.

not under the EPIRA, then the requirement of a COC is inapplicable.[38]

Petitioner further contends that the Court in Division erroneously applied Section 4.108-3(f) of Revenue Regulation ("**RR**") No. 16-2005 since nowhere in the said regulation nor the NIRC is the VAT zero rating on the sale of renewable energy limited to generation companies.[39]

RESPONDENT'S ARGUMENTS

Respondent quotes the assailed Decision in support of the argument that a COE from the DOE is required. It counters that since claims for tax refund are strictly construed against the claimant, it is incumbent upon petitioner to prove that it is entitled to the refund sought.

RULING OF THE COURT *EN BANC*

The instant *Petition* is impressed with merit.

The Court En Banc has jurisdiction over the instant Petition.

Before going into the merits of the case, We shall first rule on whether the Court *En Banc* has jurisdiction over the instant *Petition.*

On 19 February 2021, the Court in Division promulgated the assailed *Decision* petitioner received on 11 March 2021.

On 26 March 2021, petitioner filed a *Motion for Reconsideration (Re: Decision dated 19 February 2021)* within the period provided under Section 3(b), Rule 8[40] of RRCTA.

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[38] *Id.*, par. 83, *Rollo*, p. 22.
[39] *Id.*, pars. 89-91, *Rollo*, pp. 24-25.
[40] *Section 3. Who May Appeal; Period to File Petition.* — (a) x x
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a *petition for review* within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the *petition for review*.

On 6 September 2021, the Court in Division promulgated the assailed *Resolution* denying petitioner's *Motion for Reconsideration*. Petitioner received the said Resolution on 21 February 2022.

As provided under Section 3(b), Rule 8[41] of the RRCTA, petitioner had until 8 March 2022 to file a *Petition for Review* before the CTA *En Banc*.

The instant *Petition* was filed on 8 March 2022, within the period provided under Section 3(b), Rule 8[42] of the RRCTA.

Having settled that the *Petition* was timely filed, the Court *En Banc* has validly acquired jurisdiction to take cognizance of the instant case under Section 2(a)(1), Rule 4[43] of the RRCTA.

We now discuss the merits.

The Court in Division erred in denying petitioner's claim for an input VAT refund.

Section 112(A) and (C) of the NIRC of 1997, as amended, provides:

> *Section 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, 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

[41] *Supra* at note 40.
[42] *Supra* at note 40.
[43] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

> input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> ... ...
>
> (C) Period within which Refund or Tax Credit 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 ninety (90) days period shall be punishable under Section 269 of this Code. ... ...

Comprehensively, as culled from the foregoing provision and existing jurisprudence, particularly the case of *Commissioner of Internal Revenue vs. Toledo Power Co.*,[44] the requisites for claiming a refund or tax credit of input VAT under Section 112 of the NIRC of 1997, as amended, are as follows:

> <u>As to the timeliness of the filing of the administrative and judicial claims:</u>
>
> 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;[45]
>
> 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;[46]
>
> <u>Concerning the taxpayer's registration with the BIR</u>:

[44] G.R. Nos. 195175 & 199645, 10 August 2015, 766 SCRA 20-33.
[45] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, 27 April 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, 25 November 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, 3 August 2010.
[46] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, 14 January 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, 14 January 2015.

3. The taxpayer is a VAT-registered person;[47]

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[48]

5. For zero-rated sales under Sections 106 (A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* ("BSP") rules and regulations;[49]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional;[50]

7. The input taxes are due or paid;[51]

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;[52] and

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[53]

Being uncontroverted, the findings of the Court in Division as to the first, second, and third requisites are adopted by this Court. Accordingly, We agree with the Court in Division that the administrative and judicial claims have been timely filed and that respondent is a VAT-registered taxpayer.

Fourth requisite: Petitioner is engaged in zero-rated or effectively zero-rated sales.

In the assailed Decision, the Court in Division ruled that petitioner failed to fulfill the *fourth* requisite to successfully

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[47] *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., *supra*.
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *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., *supra*.
[53] *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., *supra*.

obtain the instant refund claim. It held that petitioner's sales could not qualify for VAT zero-rating because it was unable to submit the *Certificate of Compliance* issued by the Energy Regulatory Commission and the *Certificate of Endorsement* issued by the Department of Energy.

Petitioner rectified the omission by submitting a certified true copy of its *Certificate of Compliance* attached to its Motion for Reconsideration. Nonetheless, the Court in Division denied petitioner's input VAT refund claim because it only presented the DOE and BOI Certificates of Registration and still failed to submit the DOE Certificate of Endorsement. The pertinent part of the assailed Resolution[54] is quoted below:

> In the assailed Decision, it was ruled that in order to prove that its sales qualify for VAT zero-rating, petitioner should have submitted the following documents:
>
> 1. COC issued by the Energy Regulatory Commission (ERC), which must be secured before the actual commercial operations of the generation facility, pursuant to Section 108 (B)(7) of the NIRC of 1997, as amended by RA No. 9337, in relation to Section 15(g) of the Renewable Energy Act of 2008 (RA No. 9513), Section 4.108-3(f) of RR No. 16-2005, and Section 6 of the EPIRA (RA No. 9136), and its IRR; and
>
> 2. COE issued by the DOE, pursuant to Sections 13 G, 18 (A), (B), and (C), Part III, Rule 5 of the IRR of RA No. 9513.
>
> To rectify this omission, petitioner attached a certified true copy of its COC to its Motion for Reconsideration.
>
> We find the foregoing submission still insufficient to overturn the assailed Decision dated February 19, 2021.
>
> Assuming *arguendo*, that the subject COC is admitted into evidence, this Court finds that petitioner still failed to prove that its sales qualify for VAT zero-rating **due to its failure to present its COE, issued by the DOE.**
>
> As stated in the assailed Decision, Section 18 (A), (B), and (C), Part III, Rule 5 of IRR of RA No. 9513 lists the conditions for the availment of incentives and other privileges under the said law, to wit: ...

[54] *Rollo*, pp. 36-37 and p. 39.

> From the foregoing, it is clear that RE Developers must secure the following, in order to qualify for VAT zero-rating under RA No. 9513 and its IRR, to wit:
>
> 1. DOE *Certificate of Registration*;
>
> 2. Registration with the BOI; and
>
> 3. **Certificate of Endorsement by the DOE**.
>
> In this case, **petitioner was able to show DOE *Certificate of Registration* No. WESC-2009-09-005-A and WESC-2009-09-005, and BOI Certificate of Registration No. 2011-128 dated June 21, 2011**, but it was unable to submit the requisite *Certificate of Endorsement* by the DOE.
>
> Accordingly, petitioner's failure to comply with the foregoing requirement means that its sales could not qualify for VAT zero-rating. *[Emphasis supplied]*

In seeking the reversal of the assailed Decision dated 19 February 2021 and Resolution dated 6 September 2021, petitioner argues in its *Petition for Review* before the Court *En Banc* that its sale of renewable energy qualifies as a zero-rated sale and that a COE issued by the DOE is not required as it does not apply to RE developers engaged in the generation and sale of renewable energy.[55]

Citing DOE Department Circular No. DC2020-02-0005[56] and the 2021 Citizen Charter,[57] petitioner proceeds to argue that while the DOE expressly provided for guidelines to apply for a COE in order to avail duty-free importation and disposition of capital equipment and materials by an RE Developer/Operator, no similar guidelines or issuance was made to avail of other fiscal incentives under the RE Law, *e.g.*, zero percent VAT on the sale of fuel or power generated from renewable sources of energy and on purchases of local supply of other goods, properties, and services.[58] It further argues that:

> 68. Moreover, despite the provision of Section 18 (C), Part III, Rule 5 of the IRR of the RE Law, which seemingly deputizes the REMB to issue all COEs for <u>every transaction</u> where fiscal incentives of an RE Developer shall be availed of, **the 2021 Citizen Charter of the REMB only reflects its**

[55] *Petition for Review*, par. 36, *Rollo*, p. 11.
[56] *Id.*, par. 63, *Rollo*, p. 17.
[57] *Id.*, par. 66, *Rollo*, p. 18.
[58] *Id.*, par. 67, *Rollo*, p. 19.

authority to issue COEs to avail of duty-free importation of RE machinery, equipment and materials.

69. Again, no application for a COE to avail of other fiscal incentives contemplated under the RE Law was mentioned or stated in the 2021 Citizen Charter of the REMB.

70. As previously discussed, the sale of electricity through the WESM is dynamic, and spot trades are characterized by immediate or near-immediate delivery. Thus, the infeasibility to secure a COE for such transaction arises since an RE Developer cannot secure COEs fifteen (15) days for every sale or spot trade of electricity which occurs on an hourly rate. On the other hand, **no such infeasibility arises in importation and sale and/or disposition of RE machinery, equipment and materials since the RE Developer can prepare and schedule when the importation or sale of said facilities are made, if only to secure the required COE.**

71. Thus, the COE which the Honorable Court a quo requires from petitioner for purposes of refund of input VAT is not only physically infeasible but also administratively infeasible given the lack of means to actually obtain a COE for purposes other than **duty-free importation of RE machinery, equipment and materials and sale and/disposition of the same**. [*Emphasis and underscoring supplied.*]

We find merit in petitioner's contentions.

*Petitioner is not required to present a **Certificate of Endorsement (COE)** to prove that it is engaged in zero-rated sales.*

This issue is not novel. Indeed, the Court *En Banc* has previously ruled[59] that a COE issued by the DOE is not necessary to qualify for the VAT zero-rating incentive under Section 108 (B) (7) of the NIRC of 1997, as amended, in relation to Section 15 (g) of Republic Act No. 9513, also known as "The Renewable Energy Act of 2008" (RA No. 9513), and their implementing rules and regulations.

[59] *Halliburton Worldwide Limited-Philippine Branch vs. CIR,* CTA *EB* Case No. 2476 (CTA Case No. 9670), 4 April 2023; *Philippine Geothermal Production Company, Inc. vs. CIR,* CTA *EB* Case Nos. 2455 & 2460 (CTA Case No. 9663), 9 January 2023; *Vestas Services Philippines, Inc. vs. CIR,* CTA *EB* Case No. 2479, (CTA Case No. 9544), 14 October 2022;

Section 15 (g) of RA No. 9513 accords RE Developers entitlement to the VAT zero-rating treatment of its sale of fuel or power generated from renewable sources of energy and its purchases of local supply of goods, properties, and services related to the development, construction, and installation of its plant facilities, *viz.*:

> CHAPTER VII
> GENERAL INCENTIVES
>
> SECTION 15. *Incentives for Renewable Energy Projects and Activities.*— **RE Developers** or 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:
>
> ... ...
>
> (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.

Relatedly, the DOE, as the lead agency mandated to implement the provisions of RA No. 9513, issued DOE Circular No. DC2009-05-0008 or the Rules and Regulations Implementing RA No. 9513 (IRR).[60]

Section 18 (A), (B), and (C) of the IRR of RA No. 9513 enumerates the conditions that a RE Developer must comply with to avail of the incentives provided therein, to wit:

[60] Rules and Regulations Implementing Republic Act No. 9513, 25 May 2009.

SEC. 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 preterminate 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 ...

B. Registration with the Board of Investments (BOI)

... ...

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**.

... ...

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**. *(Emphasis supplied)*

In fine, to avail of the incentives under Section 15 (g) of RA No. 9513, i.e., VAT-zero rating, an RE Developer must secure and present the following documents as prescribed under Section 18 (A), (B), and (C), Rule 5, Part III of the IRR of RA 9513, to wit:

1. DOE Certificate of Registration;

2. Certificate of Registration with the BOI; and

3. Certificate of Endorsement by the DOE.

However, as correctly argued by petitioner in the instant case, the submission of a COE issued by the DOE is not required on a *per-transaction* basis for purposes of VAT-zero rating of sale of fuel or power generated from renewable sources of energy, but its submission is necessary only when an RE Developer intends to avail of the incentive of duty-free importation of RE machinery, equipment and materials, as provided in Section 15 (b) of RA No. 9513, to wit:

> Section 15. *Incentives for Renewable Energy Projects and Activities.—*
>
> ... ...
>
> (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 and 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: ... *[Emphasis supplied]*

In Section 2(b) of Department Circular No. DC2020-02-0005,[61] the DOE defined a Certificate of Endorsement as follows:

> b. Certificate of Endorsement — means the document issued by the DOE in accordance with Section 15(b) of RA No. 9513 **endorsing the application for duty-free importation of RE machinery, equipment, materials, and spare parts to the RE Developer/Operator, to exempt the Applicant**

[61] Guidelines on the Duty-Free Importation and Monitoring of the Utilization of RE Machinery, Equipment, Materials and Spare Parts and their Transfer and Other Disposition, published on 6 March 2020.

> **from payment of tariff duties on the importation**. COE may also be issued pursuant to Section 21(a) of RA No. 9513, if applicable. [*Emphasis and underscoring supplied.*]

More, in Department Circular No. DC2021-12-0042,[62] the DOE clarified that:

> Section 18. Conditions for Availment of Incentives and Other Privileges.
>
> **C. Certificate of Endorsement by the DOE**
>
> c. DOE ENDORSEMENT FOR AVAILMENT OF INCENTIVES AND DUTY-FREE IMPORTATIONS OF MACHINERY, EQUIPMENT, AND MATERIALS
>
> RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be **AUTOMATICALLY qualified to avail of the incentives provided for in the Act, OTHER THAN THE INCENTIVE OF DUTY-FREE IMPORTATION OF QUALIFIED MACHINERY, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS, after securing a Certificate of Registration from the DOE**.
>
> RE DEVELOPERS THAT IMPORT RE EQUIPMENT, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS SHALL SECURE A CERTIFICATE OF ENDORSEMENT FROM THE DOE, THROUGH THE REMB, **ON A PER IMPORTATION BASIS**. [*Emphasis and underscoring supplied, capitalization theirs.*]

In fine, based on the above DOE issuances, the DOE endorsement is required for duty-free importation of RE machinery, equipment, materials, and spare parts to the RE Developer/Operator, as well as before any sale, transfer, or disposition of the imported capital equipment, machinery, or spare parts is made. In contrast, the said endorsement is not necessary under Section 15 (g) of RA No. 9513 or the RE Developer's incentive on VAT zero-rating.

Petitioner's observation that the DOE Department Circular No. DC2020-02-0005 [63] and the 2021 Citizen Charter[64] seeming inadequacy in providing for a mechanism in securing a COE in relation to VAT zero-rating is well taken, as it has been DOE's intention not to require RE developers to submit DOE-COE for purposes of VAT zero-rating.

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[62] Prescribing Amendments to Sections 13(E) and 18(C) of Department Circular No. DC2009-05-0008, Entitled Rules and Regulations Implementing Republic Act No. 9513, Otherwise Known as "The Renewable Energy Act of 2008", 24 December 2021.
[63] *Petition for Review*, par. 63, *Rollo*, p. 17.
[64] *Petition for Review*, par. 66, *Rollo*, p. 18.

Finally, Section 3(B) of Revenue Regulations ("**RR**") No. 7-2022,[65] which implements the tax provisions of the RE Law, provides:

> *SECTION 3. Required Certifications/Accreditations from Appropriate Government Agencies for the Availment of the Tax Incentives.* — **RE developers** and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall secure the certifications/accreditations listed hereunder before any incentive provided for in the Act may be availed of**.
>
> ... ...
>
> **A. <u>Registration/Accreditation with the DOE</u>** — 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 secured and submitted to the BIR:
>
> > **<u>(1) DOE Certificate of Registration</u>** — 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 previously executed with the DOE. The DOE Certificate of Registration is 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 is 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 as determined by the DOE, in coordination with the DTI.
>
> **B. Certificate of Endorsement by the DOE** — RE Developers shall secure the Certificate of Endorsement from the DOE prior to the first year of availment of the 10% corporate income tax rate incentive.
>
> Manufacturers, fabricators, and suppliers of locally produced RE equipment who **import** components, parts, and materials necessary for the manufacture and/or fabrication of RE equipment **shall secure a Certificate of Endorsement**

[65] Tax Incentives under the Renewable Energy Act of 2008 and the Policies and Guidelines for the Availment Thereof, 22 June 2022.

> **from the DOE, through the REMB, on a *per importation basis*.**
>
> **C. Registration with the Board of Investments (BOI)** — To qualify for incentives under the Act, RE developers, manufacturers, fabricators, and suppliers of locally-produced equipment shall register with the BOI.
>
> D. Certificate of ITH Entitlement (CE) — Issued by the BOI, the CE is a required attachment to the current annual ITR to be filed with the BIR. The ITH shall only be applied to the registered activity indicated in the CE. Failure to attach the CE to the ITR may result to the forfeiture of the ITH incentive for the covered taxable year.[66]

Though RR No. 7-2022 was not yet effective during the period of the refund claim, which covers the four (4) quarters of CY 2016, its issuance on 22 June 2022 reinforces the Court's conclusion that the COE is not a requirement for an RE Developer, like petitioner, to reap the benefit of VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended, in relation to Section 15(g) of RA No. 9513.

Further, the Supreme Court applied RR No. 7-2022 in the recent case of *CBK Power Co. Limited vs. Commissioner of Internal Revenue*,[67] viz.:

> While RR No. 7-2022 was issued on June 22, 2022 and does not cover CBK's claim in this case, **the BIR's contemporaneous interpretation of the registration requirement as a condition *sine qua non* for entitlement to the fiscal incentives under Republic Act No. 9513 also carries persuasive weight**. Thus, the express language of Republic Act No. 9513, **coupled with the DOE and the BIR's consistent contemporaneous interpretation**, leads to the conclusion that an RE Developer can only avail of the fiscal incentives under Republic Act No. 9513, including VAT at zero rate, after registration with the DOE and the DOE's issuance of the corresponding certificate, in addition to the other requirements provided in the DOE IRR and RR No. 7-2022. [*Emphasis and underscoring supplied.*]

Accordingly, as an RE Developer,[68] petitioner must only present its DOE and BOI Registration certificates to be entitled to zero-rating under RR No. 7-2022. Petitioner is not bound to submit the DOE endorsement. Likewise inapplicable to a claim for VAT refund is the requirement to furnish a Certificate of ITH Entitlement.

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[66] Emphasis and underscoring supplied.
[67] G.R. No. 247918, 1 February 2023.
[68] Annex "P-4", Rollo, p. 81.

Considering the foregoing and the Court *En Banc's* pronouncements, We disagree with the Court in Division's conclusion that petitioner failed to comply with the *fourth* requisite and its sales could not qualify for VAT zero-rating because it was unable to submit the requisite COE by the DOE.

Petitioner's claim for refund is based on RA No. 9513 and not on RA No. 9136; hence, it is not required to present a ***Certificate of Compliance (COC).***

Petitioner avers that it is not required to submit a COC issued by the ERC to avail of its fiscal incentives under RA No. 9513. It asserts that the issuance of the COC by the ERC does not equate to entitlement to a zero percent VAT rate but is a requirement under EPIRA to be considered a generation company.[69] Petitioner cites the cases of *Commissioner of Internal Revenue vs. Toledo Power Company (Toledo Power),*[70] *Commissioner of Internal Revenue vs. Team Energy Corporation (Team Energy 2019 case),*[71] and *Team Energy Corporation vs. Commissioner of Internal Revenue (Team Energy 2018 case)*[72] as bases. According to petitioner, since its claim for VAT zero-rating is not pursuant to the EPIRA, then the requirement of a COC is inapplicable.[73]

We agree with petitioner's contentions.

Petitioner cannot be required to comply with the requirements under the EPIRA and the related provisions of RR No. 16-2005, particularly to secure a COC from the ERC to be entitled to VAT zero-rating on its sale of energy generated from renewable sources 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.

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[69] *Petition for Review*, par. 76, *Rollo*, p. 20.
[70] *Petition for Review*, par. 77, *Rollo*, pp. 20-21.
[71] *Petition for Review*, pars. 79-80, *Rollo*, pp. 21-22.
[72] *Petition for Review*, par. 81, *Rollo*, p. 22.
[73] *Petition for Review*, par. 83, *Rollo*, p. 22.

In the *Team Energy 2018 case*[74] and *Team Energy 2019 case*[75] cited by petitioner, 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. As ruled by the Supreme Court, where the zero-rated VAT incentive invoked is not based on the EPIRA, the taxpayer-claimant cannot be required to comply with the requirements under the EPIRA and the related provisions of RR No. 16-2005, 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.

Further, Section 3 of RR No. 7-2022 does not require petitioner to submit a COC to prove its entitlement to zero-rating. To reiterate, RR No. 7-2022 implements the provisions of the RE Law, and although issued on 22 June 2022, is nevertheless still applicable to the instant case as discussed.

Accordingly, since the subject claim for refund of input VAT attributable to zero-rated sales is based on Section 15 (g) of RA 9513, in relation to Section 108 (B) (7) of the NIRC of 1997, as amended, and as implemented by RR No. 7-2022, petitioner, as an RE Developer, need only to show that it has complied with the conditions laid down under RA 9513 and its IRR to avail of the VAT zero-rating incentive, irrespective of the requirements under the EPIRA.

Nonetheless, even if not required to present the COC, petitioner submitted a copy of its COC issued by ERC on 13 April 2015, which is valid for a period of five (5) years from its issuance, when it filed the Motion for Reconsideration (Re: Decision dated 19 February 2021) on 26 March 2021.

Apart from the COC, records reveal that petitioner also presented the following certificates, which were duly admitted in evidence by the Court in Division in its *Resolution* dated 26 September 2019,[76] to wit:

1. Certified True Copy of a Certificate of Registration with Registration No. WESC 2009-09-005, issued by the Department of Energy in favor of "Northern Luzon UPC Asia Corporation" and signed by then Secretary Angelo T. Reyes, dated 23 October 2009.[77]

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[74] G.R. Nos. 197663 & 197770, 14 March 2018.
[75] G.R. No. 230412, 27 March 2019.
[76] Division Docket – Vol. V, pp. 2379-2381.
[77] Annex "P-2", *Petition for Review*; Division Docket, Vol. I., p. 114.

2. Certified True Copy of a Certificate of Registration with Registration No. WESC 2009-09-005-A, issued by the Department of Energy in favor of "North Luzon Renewable Energy Corp. (formerly: Northern Luzon UPC Asia Corporation)" and signed by then Secretary Alfonso T. Cusi, dated 7 November 2016.[78]

3. Certified True Copy of a Certificate of Registration with No. 2011-128, issued by the Board of Investments in favor of "North Luzon Renewable Energy Corp." and signed by then Usec. Cristino L. Panlilio, dated 21 June 2011.[79]

Considering the foregoing, there is a need to ascertain whether petitioner's claimed VAT zero-rated sales comply with the invoicing and substantiation requirements under Section 113 of the NIRC of 1997, as amended, and pertinent regulations. Hence, it is proper to remand the present case to the Third Division to establish petitioner's compliance with the fourth, fifth, sixth, seventh, eighth, and ninth requisites and to determine if petitioner's prayer for input VAT refund may be granted.

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **GRANTED**. The *Decision* dated 19 February 2021 and the *Resolution* dated 6 September 2021 of the Court's Third Division in CTA Case No. 9886 are **REVERSED** and **SET ASIDE**.

Accordingly, let this case be **REMANDED** to the Court's Third Division for further determination of petitioner's compliance with other requisites to obtain a refund or tax credit of input VAT for the four (4) quarters of the taxable year 2016, and if it is entitled to such refund or tax credit.

SO ORDERED.

LANEE CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[78] Annex "P-3", *Petition for Review*; Division Docket, Vol. I., p. 115.
[79] Annex "P-4", *Petition for Review*; Division Docket, Vol. I., p. 117.

(With Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Concurring & Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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

NORTH LUZON RENEWABLE ENERGY CORP., *Petitioner*,	**CTA EB NO. 2574** (CTA Case No. 9886)
	Present: Del Rosario, *P.J.*, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo, Cui-David, and Ferrer-Flores, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 01 2023 4:32 pm

x----------x

CONCURRING OPINION

RINGPIS-LIBAN, *J.:*

I concur with the *ponencia* of my learned colleague, Associate Justice Lanee S. Cui-David, in granting the present Petition for Review and in holding that the presentation of a Certificate of Endorsement (COE) is not a requirement for the grant of VAT zero-rating incentive under Republic Act (RA) No. 9513 or The Renewable Energy Act of 2008.

My concurrence was primarily impelled by the clarification provided by the Department of Energy (DOE) as regards the documentary requirements that must be satisfied before one can avail of the incentives provided by RA 9513. In Department Circular No. DC2021-12-0042 issued on December 24, 2021, it was stated, among others, that renewable energy (RE) developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be automatically qualified to avail of the incentives provided for under RA 9513

other than the incentive of duty-free importation of qualified machinery, equipment, materials, parts and components, after securing a Certificate of Registration from the DOE.

As the administrative agency tasked to implement the provisions of RA 9513, the DOE's interpretation of the said statute is accorded great respect and ordinarily controls the construction of the courts.[1] Courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.[2] By way of exception, however, the interpretation of the statute by an administrative agency may be set aside by the courts, the latter having the final say as to what the law actually means, especially when the administrative agency's interpretation is found to be erroneous or appears to be a product of abuse of power or grave abuse of discretion.[3]

In the present case, there is no compelling reason to depart from the general rule given that the DOE's interpretation is in congruence with the provisions of RA 9513.

In view of the foregoing, I vote to **GRANT** the present Petition for Review.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[1] *Energy Regulatory Board v. Court of Appeals*, G.R. No. 113079, April 20, 2001.
[2] *Department of Agrarian Reform v. Samson, et. al.*, G.R. No. 161910, June 17, 2008; *Alecha et. al. v. Atienza, Jr.*, G.R. No. 191537, September 14, 2016.
[3] *Peralta v. Civil Service Commission*, G.R. No. 95832, August 10, 1992.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NORTH LUZON RENEWABLE ENERGY CORP., *Petitioner,*	**CTA EB NO. 2574** (CTA Case No. 9886)
	Present:
-versus-	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 01 2023 4:30pm

x- -x

CONCURRING AND DISSENTING OPINION

MANAHAN, *J.:*

I concur with my esteemed colleague, Justice Lanee Cui-David, that the requirement for a Certificate of Endorsement (COE) is applicable only for duty-free importations of Renewable Energy (RE) Machinery, Equipment, Materials and Spare Parts and not for the availment of all RE incentives under Republic Act (RA) No. 9513 (RE Law).

However, with due respect, I disagree to the position that a Certificate of Compliance (COC) is not required in a claim for refund filed by an RE entity engaged in the generation of power under Section 108(B)(7) of the 1997 National Internal Revenue Code (NIRC), as amended.

Notably, there are two (2) kinds of RE Developer under Section 15 of RA No. 9513, namely, those involved in power

generation (i.e., electricity) and non-power applications (i.e., heat) which are entitled to the named incentives therein.[1]

Sections 4(hh) and 4(nn) of RA No. 9513 define what are those classified as non-power and power applications, respectively, to wit:

> "Section 4. *Definition of Terms.* – As used in this Act, the following terms are herein defined:
>
> xxx xxx xxx
>
> (hh) "Non-power applications" refer to renewable energy systems or facilities that produce mechanical energy, combustible products such as methane gas, or forms of useful thermal energy such as heat or steam, that are not used for electricity generation, but for applications such as, but not limited to, industrial/commercial cooling, and fuel for cooking and transport;
>
> xxx xxx xxx
>
> (nn) "**Power applications**" refer to **renewable energy systems or facilities that produce electricity**;" (*Emphasis supplied*)

Under Section 15 of RA No. 9513, for these RE Developers in non-power applications to be entitled to said incentives, they are required only to be certified by Department of Energy (DOE), in consultation with the Board of Investments (BOI).

Thus, the COC, as required by ERC, is not applicable to the RE Developers generating renewable energy in non-power application.

On the other hand, for the RE Developer in power applications to be entitled to said incentives, the 2nd Paragraph of Section 26 of RA No. 9513 provides that the "**certification issued by the DOE (referring to COE) 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" under the said law**.

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[1] *Restored Energy Development Corporation v. Commissioner of Internal Revenue*, CTA Case Nos. 9958 & 9975, November 18, 2022.

Sections 4.108-3(f) and 4.108-5(b)(7) of RR No. 16-2005[2] 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%[3] 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 - 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)*

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

[3] The VAT rate has been increased to 12%. Refer to Memorandum dated January 31, 2006 from the Executive Secretary, as circulated in Revenue Memorandum Circular No. 7-2006.

The foregoing provision is consistent with Section 4 of RA No. 9513, to wit:

> "SEC. 4. *Definition of Terms* – As used in this Act, the following terms are herein defined:
>
> xxx xxx xxx
>
> (o) **'Generation Company' refers to <u>any person or entity authorized by the ERC</u> to operate facilities used in the generation of electricity**;" *(Emphasis and underscoring added)*

Relative thereto, Section 6 of RA No. 9136[4], provides, in part, 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 <u>certificate of compliance</u> 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." *(Emphases added)*

The authorization by the ERC to operate facilities used in the generation of electricity comes in the form of a COC.

Considering an RE Developer engaged in power generation comes under the regulatory power and supervision of the ERC, then compliance with Section 26 of the RE Law is in order.[5] The electric power industry is imbued with public interest, therefore, a COC is vital to be required from an RE developer engaged in power generation

Thus, in the instant case, to substantiate petitioner's claim for refund as an RE entity engaged in power generation,

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[4]AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES.

[5] 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 and underscoring added)

it should include the COC to qualify its sales as VAT zero-rated sales under Section 108(B)(7) of the 1997 NIRC, as amended, and in compliance with Section 26 of the RE Law

In the instant case, the COC was submitted by petitioner upon filing of its motion for reconsideration in the Court in Division.

WHEREFORE, I vote to **GRANT** petitioner's *Petition for Review* and to **REVERSE** and **SET ASIDE** the Court in Division's Assailed Decision and Resolution.

CATHERINE T. MANAHAN
Associate Justice