REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2600** (CTA Case No. 9793)
	Present:
-versus-	**DEL ROSARIO**, *PJ*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, *and* **FERRER-FLORES**, *JJ*.
CBK POWER COMPANY LIMITED, *Respondent.*	Promulgated: JUN 14 2023 11:56 a.m.

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue[1] ("**Petitioner**"), 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

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[1] Dated April 21, 2022, received by the Court on April 22, 2022; *En Banc* (*EB*) Docket, pp. 1-8.

[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.

the *Decision* dated October 21, 2021[5] ("**assailed Decision**") and *Resolution* dated April 6, 2022[6] ("**assailed Resolution**") of this Court's First Division ("**Court in Division**") in CTA Case No. 9793 entitled *CBK Power Company Limited vs. Commissioner of Internal Revenue.*

THE PARTIES

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue ("**BIR**"), vested with the authority to act as such, including, *inter alia,* the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. He holds office at the BIR National Office Building, Diliman, Quezon City.[7]

Respondent CBK Power Company Limited ("**CBK**") is a partnership duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the NPC-CBK Compound, Purok 6, National Highway, Barangay San Juan, Kalayaan 4015, Laguna.[8] It is a special purpose entity, the sole purpose of which is to engage in all aspects of (a) the design, financing, construction, testing, commissioning, operation, maintenance, and ownership of the Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway and other assets located in the Province of Laguna, and (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan, and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna.[9]

Respondent is registered with the BIR as a value-added tax ("**VAT**") taxpayer with Tax Identification Number ("**TIN**") No. 205-760-474.[10]

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[5] *EB* Docket, pp. 18-58; penned by Associate Justice Catherine T. Manahan, with Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo, concurring.
[6] *Id.*, pp. 60-63.
[7] *Petition for Review*, *EB* Docket, p. 2.
[8] Docket, Vol. III, Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), p. 1032.
[9] *Id.*, Vol. III, Par. 3, Facts Admitted, JSFI, p. 1033; Docket, Vol. IV, Exhibits "P-13" and "P-14", pp. 1806 to 1815.
[10] *Id.*, Vol. III, Par. 4, Facts Admitted, JSFI, p. 1033; Docket, Vol. IV, Exhibit "P-15", pp. 1816 to 1817.

THE FACTS

The following are the undisputed facts as narrated in the assailed *Decision* in CTA Case No. 9793, to wit:[11]

> Pursuant to its primary business purpose, [respondent] entered into an Accession Undertaking on September 20, 2000, with NPC, Industrias Metalurgicas Pescarmona, S.A. (IMPSA), a non-resident foreign corporation based in Argentina, and the CBK Power Corporation, wherein [respondent] acceded to a Build-Rehabilitate-Operate-and-Transfer (BROT) Agreement and agreed to rehabilitate, construct and operate on a build-operate-and-transfer basis the four (4) hydroelectric power plants known as the Caliraya, Botocan, Kalayaan I and II in the Province of Laguna.
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> On November 20, 2017, [respondent] filed through its Chief Financial Officer, Mr. Fernando J. Dela Paz, an administrative claim for refund together with its Application for Tax Credits/Refunds (BIR Form No. 1914) with the BIR Large Taxpayers Service, Revenue District Office No. 121, for the issuance of TCC for unutilized or excess creditable input taxes in the amount of ₱45,548,607.31, on its domestic purchases of goods other than capital goods, importations of goods other than capital goods, domestic purchases of services, payments of services rendered by non-residents, purchases of capital goods not exceeding P1 million, and purchases of capital goods exceeding P1 million, attributable to zero-rated sales of electricity to NPC, for the calendar year 2016, pursuant to Sections 108 (B) (7), 112 (A) and 112 (C) of the 1997 NIRC, as amended by Republic Act (RA) No. 9337. 7 On the same date, [respondent] submitted a Sworn Certification executed by Mr. Dela Paz, attesting to the completeness of the supporting documents in compliance with Revenue Memorandum Circular (RMC) No. 54-2014.
>
> On March 21, 2018, [respondent] received the letter dated March 12, 2018 from [petitioner], signed by Ms. Teresita M. Dizon, OIC — Assistant Commissioner (ACIR), Large Taxpayers Service, wherein, out of the total input VAT refund claim for the issuance of a TCC, amounting to ₱45,548,607.31, she recommended the issuance of a TCC in the amount of ₱1,296,022.00, representing input taxes on [respondent's] importations of goods other than capital goods only, and denied the amount of ₱44,252,585.31, representing unutilized input taxes on domestic purchases of goods other than capital goods, domestic purchases of services, payments for services rendered by non-residents, purchases of capital goods not exceeding P1 million, and purchases of capital goods exceeding P1 million.

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[11] *Supra* at note 5.

[Respondent] filed the instant Petition for Review on March 28, 2018. The petition was initially raffled to this Court's Second Division.

[Petitioner] filed his Answer on July 3, 2018, interposing a main defense that [respondent] is not entitled to a refund or issuance of a TCC in the aggregate amount of ₱44,252,585.31 allegedly representing unutilized input VAT for the period January 1, 2016 to December 31, 2016.

The pre-trial conference was initially set on August 2, 2018. However, upon [respondent's] Motion for Postponement of Pre-Trial Conference filed on July 19, 2018, the pre-trial conference was reset to and held on August 30, 2018. Petitioner's Pre-Trial Brief was filed on August 17, 2018, while Respondent's Pre-Trial Brief was submitted on August 24, 2018.

On September 13, 2018, the parties filed their Joint Stipulation of Facts and Issues, which was noted by the Court in the Resolution dated October 29, 2018, deeming the termination of the Pre-Trial. Thereafter, the Pre-Trial Order was issued on January 15, 2019.

In the Order dated September 24, 2018, the instant case was transferred to this Court's First Division.

[Petitioner] transmitted the BIR Records on October 4, 2018.

Trial then ensued.

During trial, [respondent] presented documentary and testimonial evidence. [Respondent] offered the testimonies of the following individuals, namely: (1) Mr. Fernando J. Dela Paz, petitioner's Chief Financial Officer; and (2) Ms. Myra Celeste O. Dabalos, the duly commissioned Independent Certified Public Accountant (ICPA).

Ms. Dabalos submitted her Final ICPA Report dated February 14, 2019 on March 1, 2019, and Amended Final ICPA Report dated June 4, 2019 on June 6, 2019.

[Respondent] filed its Formal Offer of Evidence on July 11, 2019. [Petitioner] posted his Comment Re: [Respondent's] Formal Offer of Evidence on July 22, 2019. In the Resolution dated October 28, 2019, the Court admitted [selected] petitioner's exhibits ... .

[Respondent] filed its Motion for Partial Reconsideration on November 20, 2019. [Petitioner] failed to file his comment thereon. In the Resolution dated June 23, 2020, the Court

> partially granted the said Motion, and admitted [certain exhibits].
>
> [Petitioner] manifested that he will no longer present his witnesses.
>
> [Petitioner's] Memorandum was filed on December 13, 2019; while Memorandum for the [Respondent] was submitted on July 28, 2020.
>
> On September 16, 2020, the instant case was submitted for decision. [*Brackets ours, citations omitted.*]

On October 21, 2021, the Court in Division ruled in favor of respondent.[12] The dispositive portion reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱37,901,257.45, representing unutilized input VAT attributable to its zero-rated sales/receipts for calendar year 2016, in addition to the Tax Credit Certificate in the amount of ₱1,296,022.00 to be issued in favor of petitioner pursuant to the Letter dated March 12, 2018, signed by Ms. Teresita M. Dizon, OIC-Assistant Commissioner, Large Taxpayers Service.
>
> **SO ORDERED**.

On November 12, 2021, petitioner filed his *Motion for Partial Reconsideration (Re: Decision promulgated October 21, 2021).*[13] Following the Court's *Resolution,*[14] Respondent filed its *Comment on/Opposition to Respondent's Motion for Partial Reconsideration (Re: Decision promulgated October 21, 2021)* on February 3, 2022.[15]

On April 6, 2022, the Court in Division promulgated its *Resolution*[16] with the following dispositive portion:

> **WHEREFORE**, respondent's *Motion for Partial Reconsideration (Re: Decision promulgated October 21, 2021)* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.

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[12] Division Docket – Vol. VII. pp. 3671-3691.
[13] Division Docket, Vol. V, pp. 2061-2068.
[14] Resolution dated December 13, 2021, Division Docket, Vol. V, p. 2072.
[15] Division Docket, Vol. V, pp. 2073-2080.
[16] *Supra* at note 6.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On April 22, 2022, petitioner filed a *Petition for Review*[17] before the Court *En Banc*. In a *Resolution* dated May 13, 2022,[18] the Court ordered respondent to file its comment. Respondent filed its *Comment on Petition for Review (Dated April 21, 2022)* on June 2, 2022.[19]

Thus, on June 15, 2022, this Court issued a *Resolution* submitting the *Petition* for decision.[20]

Hence, this Decision.

ISSUE

Petitioner raises the sole issue for the Court *En Banc's* resolution as follows:

> THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN PARTIALLY GRANTING THE REFUND BASED ON BIR RULING NO. DA-146-2006.

PETITIONER'S ARGUMENTS

Petitioner argues that the *Denial Letter* dated March 12, 2018, has for its basis the decision of the CTA in CTA Case No. 8784 entitled *CBK Power Company Ltd. vs. CIR.*

Petitioner further posits that Section 44 of the Implementing Rules and Regulations ("**IRR**") of Republic Act ("**RA**") No. 9513, otherwise known as the Renewable Energy Act of 2008 ("**RE Law**"), categorically repeals any issuance or administrative rule that is contrary to the said law. Thus, according to petitioner, there is no need to revoke, reverse, or modify BIR Ruling No. DA-146-2006 since anything inconsistent with RA No. 9513 is deemed revoked, and the Court in Division's reliance with BIR Ruling No. DA-146-2006 is misplaced.

Petitioner invokes this Court's ruling in CTA Case No. 8784 and CTA *EB* No. 1685 in his *Petition.*

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[17] *Supra* at note 1.
[18] *EB* Docket, pp. 65-66.
[19] *Id.*, pp. 67-74.
[20] *Id.*, pp. 80-81.

RESPONDENT'S ARGUMENTS

In its *Comment*, respondent invokes the Court's ruling in CTA *EB* No. 1861, which reversed the ruling in CTA *EB* No. 1685 as invoked by petitioner. Respondent emphasizes that this was affirmed by the Supreme Court in G.R. No. 252993 entitled *CIR vs. CBK Power Company Limited.*

RULING OF THE COURT *EN BANC*

The instant *Petition* is *not* impressed with merit.

The Court *En Banc* has jurisdiction over the instant Petition.

Before proceeding to the merits of the case, We shall determine whether the Court *En Banc* has jurisdiction over the instant *Petition.*

On October 21, 2021, the Court in Division promulgated a *Decision* partially granting respondent's *Petition for Review.*[21]

On November 12, 2021, petitioner filed his *Motion for Partial Reconsideration (Re: Decision promulgated October 21, 2021)*[22] within the period provided under Section 3(b), Rule 8[23] of RRCTA.

On April 6, 2022, the Court in Division denied the *Motion for Reconsideration* through a *Resolution,*[24] a copy of which was received by petitioner on April 12, 2022.

As provided under Section 3(b), Rule 8[25] of the RRCTA, petitioner had fifteen (15) days from receipt of the assailed *Resolution,* or until April 27, 2022, to file his *Petition for Review* before the CTA *En Banc.*

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[21] *Supra* at note 5.
[22] *Supra* at note 13.
[23] *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.
[24] *Supra* at note 6.
[25] *Supra* at note 2.

Within the reglementary period, on April 22, 2022, petitioner filed the instant *Petition.*[26]

Having settled that the *Petition* was timely filed, We likewise rule that the CTA *En Banc* has validly acquired jurisdiction to take cognizance of this *Petition* under Section 2(a)(1), Rule 4[27] of the RRCTA.

We now discuss the merits.

At the first instance, We note that petitioner's arguments in his *Petition for Review* before this Court are mere reiterations of his arguments in the *Motion for Reconsideration* before the Court in Division. Nevertheless, We shall discuss petitioner's contentions.

Requisites for a valid claim for refund or tax credit of input VAT attributable to zero-rated sales.

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 input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

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[26] *Supra* at note 1.

[27] *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.

... ...

(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 v. Toledo Power Co.*,[28] 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:

As to the 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;[29]

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;[30]

Concerning the taxpayer's registration with the BIR:

3. The taxpayer is a VAT-registered person;[31]

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[28] G.R. Nos. 195175 & 199645, August 10, 2015, 766 SCRA 20-33.
[29] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, 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.
[30] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[31] *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*.

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[32]

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;[33]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional;[34]

7. The input taxes are due or paid;[35]

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;[36] and

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[37]

Being uncontroverted, the findings of the Court in Division as to the first, second, third, and sixth requisites are adopted by this Court. Accordingly, We agree with the Court in Division that the administrative and judicial claims have been timely filed, that respondent is a VAT-registered taxpayer, and that the input taxes involved are not transitional.

Likewise, We find the fifth requisite inapplicable to the instant claim for refund since respondent's zero rating is based on Section 108(B)(7) and *not* under Sections 106 (A)(2)(a)(1), (2) and (b) and 108 (B)(1) and (2), of the NIRC of 1997, as amended, which require payment in acceptable foreign currency to qualify for zero-rating.

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[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *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.*
[37] *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.*

Fourth requisite: Respondent's sale of power generated through renewable sources of energy to NPC qualifies as a zero-rated sale.

Anent the *fourth* requisite, We find CBK's sale of electricity generated through hydropower to NPC under the *Accession Undertaking* and *BROT Agreement* to be zero-rated.

First, respondent argues that it has complied with all the basic requirements to be entitled to the issuance of a tax credit certificate ("**TCC**") of unutilized or excess creditable input taxes for calendar year 2016.[38] It invokes Section 108(B)(7) of the NIRC of 1997, as amended by R.A. No. 9937, and as implemented by Section 4.108-5(b) of Revenue Regulations ("**RR**") No. 16-2005,[39] viz.:

> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> (a) . . .
>
> (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:
>
> ... ...
>
> (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.

In BIR Ruling DA-146-06 dated March 17, 2006, petitioner, through then Assistant Commissioner James H. Roldan, confirmed that respondent's sale of electricity to NPC is subject to zero percent (0%) VAT under Section 108 (B) (7) of the

[38] Also see Division Decision, p. 7.
[39] Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

NIRC of 1997, as amended by RA No. 9337. The pertinent portion of the said Ruling reads:

> **WHEREFORE**, in view of the foregoing, this Office holds that the billings of CBK, an entity engaged in hydropower generation, to NPC for the sale of electricity generated through hydropower are **subject to VAT at zero percent (0%)** under Section 108(B)(7) of R.A. 9337. Accordingly, CBK need not apply for any prior approval or confirmation with the BIR as required under Section 4.108-6 of Revenue Regulations No. 16-2005.
>
> This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void. [*Emphasis supplied.*]

Under Section 108 (B) (7) of the NIRC of 1997, as amended, and the above BIR Ruling, respondent's sale of electricity to NPC is qualified for VAT zero-rating.

Second, on the argument that BIR Ruling DA-146-06 has already been revoked, We quote with assent the disquisition of the Court in Division, to wit:

> Thus, by virtue of the foregoing ruling by the BIR, the sale by petitioner of electricity generated through hydropower to NPC should be treated as subject to the 0% percent VAT rate under Section 108(B)(7) of the 1997 NIRC as amended. The above-quoted BIR Ruling is binding on respondent until validly modified or reversed by the latter. However, any modification or reversal by respondent of the same BIR Ruling shall not be given retroactive application if it will be prejudicial to petitioner, pursuant to Section 246 of the 1997 NIRC, as amended, to wit:
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> > "SEC. 246. Non-Retroactivity of Rulings. — **Any revocation, modification, or reversal of** any of the rules and regulations promulgated in accordance with the preceding Sections or **any of the rulings** or circulars **promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers**, except in the following cases:
> >
> > (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith."

The abovementioned provision expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who, in good faith, relied on the BIR regulation or ruling prior to its reversal.

For sure, the modification or reversal of BIR Ruling No. DA-146-2006, dated March 17, 2006, is prejudicial to petitioner. This is so because, in such situation, the sale of petitioner to NPC will then be subject to the 12% VAT rate, and petitioner will not be able to claim for a refund of its input VAT.

Moreover, the facts of the case do not show that petitioner deliberately committed mistakes or omitted material facts when it obtained the said ruling from the BIR. Neither is there an indication that the facts subsequently gathered by the BIR are materially different from the facts on which the same ruling is based; nor is it shown that petitioner acted in bad faith. Thus, in the absence of such proof, this Court upholds the application of Section 246 of the 1997 NIRC, as amended. Consequently, the pronouncement made by the BIR in BIR Ruling No. DA-146-2006 dated March 17, 2006 as to petitioner's VAT zero-rating on its sale of electricity generated through hydropower to NPC should be upheld.

To be clear, however, the reversal or revocation of BIR Ruling No. DA-146-2006 happened only upon the filing of respondent's Answer on July 3, 2018, wherein respondent contested petitioner's refund claim. It could not have been legally made in the letter dated March 12, 2018, signed by OIC-ACIR Teresita M. Dizon, partially denying petitioner's administrative claim because the power to reverse, revoke or modify any existing ruling of the BIR can only be exercised by the respondent himself. Such power may not be validly delegated by respondent to any other officer in the BIR, pursuant to Section 7 of the 1997 NIRC, as amended, to wit:

> "SEC. 7. Authority of the Commissioner to Delegate Power. — The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under the rules and regulations to be promulgated by the Secretary of Finance, upon

> recommendation of the Commissioner: Provided, however, **That the following powers of the Commissioner shall not be delegated**:
>
> xxx xxx xxx
>
> (b) The power to issue rulings of first impression or **to reverse, revoke or modify any existing ruling of the Bureau**"; [*Emphasis and underscoring supplied.*]

Accordingly, We agree with the Court in Division that the revocation, which We reckon from the filing of respondent's Answer on July 3, 2018, could not be applied retroactively under Section 246 of the NIRC of 1997, as amended.[40] We likewise agree that the *Denial Letter* signed by OIC-ACIR Teresita M. Dizon dated March 12, 2018, could not be considered as the revocation of the said Ruling as the power to reverse, revoke, or modify any existing ruling is a non-delegable power and must be done by the CIR himself in accordance with the above-cited Section 7 of the NIRC of 1997, as amended.

Third, petitioner's invocation that BIR Ruling DA-146-06 has been repealed by the effectivity of RA No. 9513 or the RE Law is misplaced. Respondent's VAT refund claim is anchored in Section 108(B)(7) of the NIRC of 1997, as amended, and not in RE Law. Respondent is *not* registered with the DOE and has not availed of the incentives under RA No. 9513.[41]

Moreover, records reveal that respondent offered and submitted as evidence before the Court in Division the Certificates of Compliance ("**COCs**") issued by the Energy Regulatory Commission ("**ERC**") to prove that its sales of electricity to NPC qualify as VAT zero-rated, to wit:

a. COC No. 14-07 GXT49A-0050L dated July 14, 2014, pertaining to Kalayaan Hydro Pump Storage Power Plant;[42]

b. COC No. 14-07 GXT49B-0051L dated July 14, 2014, pertaining to Caliraya Hydroelectric Power Plant;[43]

c. COC No. 14-07 GXT49C-0052L dated July 14, 2014, pertaining to Botocan Hydroelectric Power Plant.[44]

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[40] See *Commissioner of Internal Revenue v. Officemetro Philippines, Inc.*, CTA *EB* Case No. 1210 (CTA Case No. 8382), March 7, 2016.
[41] Division Decision, p. 25; Division Docket, Vol. IV, Exhibits "P-4" and "P-5", pp. 1582 to 1583.
[42] Exhibit "P-10", Division Docket, Vol. IV, p. 1803.
[43] Exhibit "P-11", Division Docket, Vol. IV, p. 1804.
[44] Exhibit "P-12", Division Docket, Vol. IV, p. 1805.

The COCs prove that respondent is authorized to operate generation facilities under RA No. 9136 or the "Electric Power Industry Reform Act of 2001" (EPIRA).

Under the EPIRA, a *generation company* must secure a COC before selling power or fuel generated from renewable energy sources can qualify for VAT zero-rating.

Section 4.108-3(f) of RR No. 16-2005[45] defines *generation companies*. It states that their sale of power generated through renewable sources of energy shall be zero-rated, if authorized by the ERC, to wit:

> SEC. 4.108-3. *Definitions and Specific Rules on Selected Services.*- ...
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10%[46] 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"*** refer 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. ... [*Emphasis and underscoring supplied*]

Correlatively, Section 6 of the EPIRA provides that a COC is a prerequisite before a *generation company* can operate and henceforth avail of 0% VAT, to wit:

> 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

[45] Prescribes the Consolidated Value-Added Tax Regulations of 2005, superseding RR No. 14-2005 (November 1, 2005), issued to implement Section 108(B)(7) of the NIRC of 1997, as amended.
[46] Now 12% under Revenue Memorandum Circular No. 7-2006.

> health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> ...
>
> 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 and underscoring supplied]*

In *Commissioner of Internal Revenue vs. Team Energy Corporation (Formerly Mirant Pagbilao Corporation)*, [47] the Supreme Court held that the requirements of the EPIRA must be complied with if the claim for refund is based on EPIRA. Applying this by analogy, the requirements of RE Law must be complied with only if the claim for refund is based on RE Law.

Here, the VAT refund claim is clearly under EPIRA. Hence, there is no need for respondent to prove compliance with the requirements of the VAT refund claim under RE Law.

Fourth, the Supreme Court has recently ruled in *CBK Power Co. Limited v. CIR (CBK Power case)*[48] that respondent's sale of power generated through renewable energy sources to NPC is zero-rated. However, it is still required to prove compliance with the invoicing and other requirements of the VAT refund claim, *viz.*:

> Here, the first and second requisites have already been established. **Further, there is also no dispute that CBK's sale of power generated through hydropower to NPC are VAT zero rated.** Nonetheless, even as these transactions are VAT zero rated, CBK still has the onus to prove that it complied with the pertinent invoicing requirements under Section 113 (A) and (B) of the NIRC. ...

On this score, the Court in Division correctly found that respondents supporting official receipts comply with the *invoicing requirements* under the law and regulations. However, it failed to provide the official receipts corresponding to the sales in the amount of ₱204,021,841.08, representing Capital Recovery Fees, and ₱68,755,471.19, representing Operation and Maintenance Fees, totaling ₱272,777,312.27.[49]

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[47] G.R. No. 230412, March 27, 2019.
[48] G.R. No. 247918, February 1, 2023.
[49] Division Decision, pp. 20-21.

Accordingly, We affirm the Court in Division's ruling that for purposes of the *fourth* requisite, respondent's sales or receipts for the four (4) quarters of 2016 are zero-rated, but only up to the extent of ₱2,333,185,424.48 computed as follows:

Zero-rated sales in Q1 2016[50]		₱ 651,502,643.45
Zero-rated sales in Q2 2016[51]		647,175,150.46
Zero-rated sales in Q3 2016[52]		652,091,193.28
Zero-rated sales in Q4 2016[53]		655,193,749.56
Declared zero-rated sales		₱2,605,962,736.75
Less: Disallowances by the Court in Division		
Unsupported capital recovery fees	₱204,021,841.08	
Unsupported operation and maintenance fees	68,755,471.19	(272,777,312.27)
Valid zero-rated sales/receipts		₱2,333,185,424.48

Seventh requisite: The input taxes being claimed were due or paid.

Anent the *seventh* requisite, We rule that respondent has paid input taxes on its purchases.

Petitioner's denial of respondent's claim for refund is allegedly hinged on RA No. 9513. Notably, in its *Answer* before the Court in Division,[54] petitioner invoked Section 15(g) of RA No. 9513:

> 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:
>
> ...
>
> (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),

[50] Exhibit "P-104".
[51] Exhibit "P-107".
[52] Exhibit "P-109".
[53] Exhibit "P-111".
[54] Division Docket, Vol. I, pp. 288-295.

pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

> **All RE Developers shall be entitled to zero-rated value-added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.**
>
> This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors. [*Emphasis and underscoring supplied.*]

Petitioner argues that respondent is entitled to zero-rated VAT on its purchases. Considering that there was no input VAT to be paid by RE Developers such as respondent, then, according to petitioner, it necessarily follows that respondent is not entitled to refund or issuance of a TCC from its purchases.

The issue is not novel.

Petitioner invokes this Court's ruling in CTA *EB* No. 1685,[55] wherein We ruled that:

> **CBK cannot seek a refund from the BIR of its unutilized input taxes because, under RA No. 9513, its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities as well as the whole process of exploring and developing renewable energy sources up to its conversion into power are zero-rated**. The CTA Division is correct in its conclusion "that since no input VAT should be paid by petitioner, it is not, therefore entitled to a refund, or issuance of TCC from its purchases of goods and services needed for the development, construction, and installation of their plant facilities as well as to the whole process of exploration and development of RE sources up to its conversion into power." [*Emphasis and underscoring supplied.*]

However, the above ruling has already been *abandoned* in the recent *CBK Power case*,[56] where the Supreme Court categorically ruled that the CTA *En Banc* erred in ruling that CBK is covered by RA No. 9513.

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[55] *CBK Power Co. Limited v. Commissioner of Internal Revenue*, CTA *EB* Case No. 1685 (CTA Case No. 8784), February 20, 2019.
[56] G.R. No. 247918, dated February 1, 2023.

> Here, there is nothing in the record that would show that CBK registered with the DOE, let alone registered with the BOI and obtained all the necessary certificates required under Republic Act No. 9513 and the DOE IRR. In fact, CBK has consistently stated in its pleadings both in the CTA and before the Court that it has not registered with the DOE and is thus not entitled to VAT at zero rate. Notably, the CIR admits this in its Comment.
>
> Thus, **the CTA *En Banc* erred in ruling that CBK is covered by Republic Act No. 9513 and is entitled to VAT at zero rate for its transactions**. CBK's transactions, in fact, are subject to 12% VAT, as it correctly asserts. [*Emphasis supplied.*]

In another case[57] involving the same parties and the same set of issues, the Supreme Court likewise noted that "the issue on whether or not respondent was compliant with the requirements under [RA] No. 9513 ... to avail of the fiscal incentives under Section 15 thereof is a matter that must be duly proven in the course of the trial proper through the submission of competent proof."

The Supreme Court added in the same case: "Curiously, it is the CIR who advanced the foregoing theory as a defense to disallow respondent's claim for a refund but presented no evidence to buttress its claim. It is a basic rule in evidence that each party must prove his/her affirmative allegations and that mere allegation is not proof, especially in this case, when the CIR was given ample opportunity to present evidence but intentionally omitted to do so."

Accordingly, in both cases, the Supreme Court agreed with CBK that it is not availing of the tax incentives under the RE Law but is merely basing its claim of zero-rating on Section 108(B)(7) of the NIRC of 1997, as amended.

Further, in the *CBK Power case,* the Supreme Court agreed with Associate Justice Manahan's view that in determining CBK's entitlement to a tax refund, it is necessary to establish whether CBK has complied with the requisites for a tax refund claim, *viz.*:

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[57] *Commissioner of Internal Revenue vs. CBK Power Company Limited*, G.R. No. 252993 (Notice), September 21, 2020.

Given this, the Court agrees with **Associate Justice Manahan**'s view that in determining CBK's entitlement to a tax refund, the question is whether CBK has complied with the following established requisites for a tax refund claim:

1. The taxpayer is VAT-registered;

2. The administrative and judicial claims for refund were filed within their respective prescriptive periods;

3. The taxpayer is engaged in zero-rated or effectively zero-rated sales;

4. The input taxes were incurred or paid;

5. The input taxes are attributable to zero-rated or effectively zero-rated sales; and ca

5. The input taxes were not applied against any output VAT liability.

Here, the first and second requisites have already been established. Further, there is also no dispute that CBK's sale of power generated through hydropower to NPC are VAT zero rated. Nonetheless, even as these transactions are VAT zero rated, CBK still has the *onus* to prove that it complied with the pertinent invoicing requirements under Section 113 (A) and (B) of the NIRC. Moreover, CBK must also show that its sales invoices and official receipts are duly registered with the BIR pursuant to Section 237 in relation to Section 238 of the NIRC. However, because the CTA *En Banc* and the CTA Special First Division based their rulings on the question of whether CBK's transactions are subject to zero-rated VAT under Republic Act No. 9513, they did not examine CBK's evidence on record to determine whether they sufficiently established that CBK did comply with the invoicing requirements under the NIRC.

The same is true as to the fourth, fifth, and sixth requisites. As regards **the *fourth requisite*, CBK has the duty to present supporting documents to prove that its input taxes were actually due or paid.** In connection with this, Section 4.110-8 of Revenue Regulations No. 16-2005 lists the substantiation requirements for input tax credits. For **the *fifth requisite*, the evidence on record must be examined to confirm if the input taxes are attributable to zero-rated sales or if CBK has both zero-rated and taxable or exempt sales.** In the latter case, if the input taxes cannot be directly and entirely attributable to any of the sales, the input taxes must be proportionately allocated on the basis of sales volume. Further, as to **the *sixth requisite*, the evidence submitted by CBK must be reviewed to ascertain if the input taxes were indeed not**

> **applied to any outstanding output VAT liability.** [*Emphasis and underscoring supplied.*]

The *fourth, fifth, and sixth* requisites in the above-quoted case correspond to the *seventh, eighth, and ninth* requisites in the instant case.

Given the foregoing, respondent needs to prove that its input taxes were due or paid, that its input taxes 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 based on sales volume; that its input taxes were indeed not applied to any outstanding output VAT liability.

Here, We agree with the Court in Division's observation that in compliance with the *seventh* requisite, only the amount of ₱42,459,244.75 is duly substantiated and considered valid input VAT, *viz.*:

Claimed creditable input VAT	₱ 44,379,461.81
Less: Disallowances per ICPA Amended Report	(531,947.94)
Less: Disallowances per verification of the Court in Division	(1,388,269.12)
Valid creditable input VAT	₱ 42,459,244.75

The disquisition of the Court in Division is reiterated and quoted with approval, *viz.*:

> Anent this *seventh requisite* in claiming VAT refund, it is of vital importance for petitioner to provide supporting documents to prove that the input taxes claimed for the 1st and 3rd quarters of 2016 were actually due or paid, in accordance with Section 110 (A) of the 1997 NIRC, as amended, which provides that: ...
>
> ... ...
>
> It is categorically mentioned in the above provisions that in order to be entitled to input tax credits, the same must be evidenced by VAT invoices ... or ORs ... issued in accordance with the above-quoted Section 113 of the 1997 NIRC, as amended.

Thus, in order to prove entitlement to credits for input taxes due or paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-2005, but more importantly, these documents must comply with the invoicing requirements under the earlier quoted Sections 113 (A) and (B), 237 and 238 of the 1997 NIRC, as amended, as implemented by Section 4.113-1 (A) and (B) of RR No. 16-05, as amended.

In its latest Amended Quarterly VAT Returns for 2016, petitioner reported excess input taxes in the aggregate amount of P45,548,607.31, which is the subject of petitioner's administrative claim filed on November 20, 2017, to wit: ...

... ...

The amount of P1,296,022.00 representing input tax on importation of goods other than capital goods had already been effectively granted by respondent, hence, only the remaining amount of P44,252,585.31 (P45,548,607.31 less P1,296,022.00) is the subject of the present appeal.

However, in determining petitioner's entitlement to the instant claim, the Court shall have, as reference point, the amount of P44,379,461.81, which represents the net creditable tax after deducting the amount of P1,296,022.00 input tax already granted by the BIR from the total creditable input tax of P45,675,483.81.

To prove that it incurred/paid the input VAT amounting to P44,379,461.81 for 2016, petitioner submitted its *Schedule of Input Tax* and the related suppliers' invoices, ORs, BIR Forms 1600 and other documents which were examined by the Court-commissioned ICPA, Ms. Myra Celeste O. Dabalos. A scrutiny of the ICPA's *Amended Report* and related supporting documents shows that input taxes in the amount of P531,947.94 should be disallowed for non-compliance with the substantiation requirements under Sections 110 (A) and 113 (A) and (B) of the 1997 NIRC, as amended, ...

... ...

In addition, the following input taxes amounting to P1,388,269.12 shall likewise be disallowed for failure to meet the substantiation requirements prescribed under the aforementioned VAT law and regulations, *viz.*: ...

... ...

Thus, **in compliance with the *seventh* requisite, out of petitioner's claimed creditable input VAT of P44,379,461.81, only the amount of P42,459,244.75, as computed below, is duly substantiated and shall be considered valid input VAT**, to wit: ...[*Emphasis supplied.*]

Eighth requisite: The input taxes claimed are attributable to zero-rated or effectively zero-rated sales.

To reiterate, the *eighth* requisite is that 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 based on sales volume.

In the instant case, respondent has declared zero-rated sales/receipts of ₱2,605,962,736.75 and VATable sales/receipts of ₱1,057,304.12, reflecting total sales/receipts of ₱2,607,020,040.87 for 2016. Thus, its valid input VAT of ₱42,459,244.75, as determined under the *seventh* requisite, shall be proportionately allocated based on respondent's sales volume, *viz.*:

	Amount per VAT returns	Allocation factor	Valid Input VAT allocation
Regular VAT-subject sales/receipts	₱ 1,057,304.12	0.04056%	₱ 17,219.79
Zero-rated sales/receipts	2,605,962,736.75	99.95944%	**42,442,024.96**
Total	₱ 2,607,020,040.87	100.00000%	₱ 42,459,244.75

Indeed, respondent's input VAT attributable to its declared zero-rated sales/receipts only amounted to ₱42,442,024.96.

Ninth requisite: The input taxes have not been applied against output taxes during and in the succeeding quarters.

Respondent is entitled to the issuance of TCC in the amount of ₱37,999,435.92.

The Court in Division found that the input taxes attributable to valid zero-rated sales/receipts, which were not applied against output taxes during and in the subsequent quarters, amounted only to ₱37,901,257.45. Hence, it partially granted respondent's claim and ordered petitioner to issue a

TCC in favor of respondent in the amount of ₱37,901,257.45, *viz.*:

> Since petitioner's valid input VAT of ₱17,219.79 allocated to VATable sales/receipts is not enough to cover its output VAT liability for calendar year 2016 in the amount of ₱126,876.50, the valid input VAT of ₱42,442,024.96 allocated to the declared zero-rated sales/receipts shall be utilized to pay for the remaining output VAT of P109,656.71, as shown below:
>
> | | |
> |---|---|
> | Output VAT per VAT returns | ₱126,876.50 |
> | Less: Valid input VAT allocated to VATable sales/receipts | (17,219.79) |
> | Output VAT still due | ₱109,656.71 |
>
> | | |
> |---|---|
> | Substantiated input VAT allocated to declared zero-rated sales/receipts | ₱42,442,024.96 |
> | Less: Output VAT still due | (109,656.71) |
> | Excess input VAT attributable to declared zero-rated sales/receipts | ₱42,332,368.25 |
>
> Based on the foregoing table, petitioner had excess/unutilized input VAT for 2016 in the amount of ₱42,332,368.25, which can be attributed to its entire declared zero-rated sales/receipts in the amount of ₱2,605,962,736.75.
>
> However, as stated earlier, petitioner was able to properly substantiate only the amount of ₱2,333,185,424.48 out of its total declared zero-rated sales/receipts of ₱2,605,962,736.75. Thus, the excess/unutilized input VAT attributable to the ₱2,333,185,424.48 valid zero-rated sales/receipts amounts only to ₱37,901,257.45, as computed below:
>
> | | |
> |---|---|
> | Excess input VAT attributable to declared zero-rated sales/receipts | ₱42,332,368.25 |
> | Divided by declared zero-rated sales/receipts | 2,605,962,736.75 |
> | Multiply by valid zero-rated sales/receipts | 2,333,185,424.48 |
> | Excess input VAT attributable to valid zero-rated sales/receipts | ₱37,901,257.45 |

However, considering the Supreme Court's ruling in the *Chevron Holdings, Inc. v. CIR* case,[58] the Court in Division's computation needs revisiting. In *Chevron*, the Supreme Court stated:

[58] G.R. No. 215159, July 5, 2022.

> It must be stressed that the taxpayer can charge its input tax only against its output tax. The taxpayer cannot ask for a refund of or credit against its other internal revenue tax liabilities the "excess" input tax because the tax is not an excessively collected tax under Section 229 of the Tax Code. And, even if the "excess" input tax is in fact "excessively" collected, the person who can file the judicial claim for refund is the person legally liable to pay the input tax, not the person to whom the tax was passed on as part of the purchase price. The taxpayer will be entitled to the refund or tax credit of the "excess" and unused input tax only when its VAT registration is cancelled.
>
> This rule, however, is not absolute. Sections 110 (B) and 112 (A) of the Tax Code read in part below: ...
>
> ... ...
>
> Thus, the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) **charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety**. It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. Furthermore, **the option is vested with the taxpayer-claimant**. It goes without saying that the CTA, and even the Court, may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund. **The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence**. [*Emphasis and underscoring supplied.*]

In other words, with respect to its input taxes attributable to zero-rated sales, it is the taxpayer (and not the Court) who is given the option to either:

1. *Charge* a portion of its input taxes attributable to zero-rated sales to the output taxes, and refund the balance, if any; or,

2. *Refund* all of the input taxes attributable to zero-rated sales.

Applying *Chevron*, We find no necessity to utilize the valid input VAT of ₱42,442,024.96 allocated to the declared zero-rated sales/receipts to pay for the remaining output VAT of ₱109,656.71. The entire amount of ₱42,442,024.96 allocated to the **declared** zero-rated sales/receipts shall thus be apportioned to the **valid** zero-rated sales/receipts of respondent. The revised computation follows:

Excess input VAT attributable to declared zero-rated sales/receipts	₱ 42,442,024.96
Divided by declared zero-rated sales/receipts	2,605,962,736.75
Multiply by valid zero-rated sales/receipts	2,333,185,424.48
Excess input VAT attributable to valid zero-rated sales/receipts	₱ 37,999,435.92

Accordingly, respondent has sufficiently proven its entitlement to the issuance of TCC in the amount of ₱37,999,435.92, representing the excess or unutilized input VAT attributable to its zero-rated sales/receipts for the calendar year 2016.

An applicant for a tax refund or tax credit must not only prove entitlement to the claim but also comply with all the documentary and evidentiary requirements, such as VAT invoicing requirements provided by tax laws and regulations.[59] Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[60]

However, once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to a refund. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party, that is, the respondent. It is then the latter's turn to disprove the claim by presenting contrary evidence.[61]

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[59] *Philippine Gold Processing and Refining Corp. vs. Commissioner of Internal Revenue*, G.R. No. 222904 (Notice), July 15, 2020.
[60] *Commissioner of Internal Revenue vs. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 703 SCRA 310-434
[61] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015, 752 SCRA 375-412.

Considering all the foregoing, other than the application of the *Chevron* case, We see no compelling reason to depart from the ruling of the Court in Division.

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

Accordingly, the assailed *Decision* dated October 21, 2021, is **MODIFIED** as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **Thirty-Seven Million Nine Hundred Ninety-Nine Thousand Four Hundred Thirty-Five Pesos and Ninety-Two Centavos (₱37,999,435.92)**, representing the unutilized input VAT attributable to its zero-rated sales/receipts for the calendar year 2016, in addition to the Tax Credit Certificate in the amount of ₱1,296,022.00 to be issued in favor of petitioner pursuant to the Letter dated March 12, 2018, signed by Ms. Teresita M. Dizon, OIC-Assistant Commissioner, Large Taxpayers Service.
>
> **SO ORDERED**.

SO ORDERED.

LANEE CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With Separate Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
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

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **CBK POWER COMPANY LIMITED,** Respondent.	**CTA EB No. 2600** (CTA Case No. 9793) Present: **DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** and **FERRER-FLORES**, *JJ.* Promulgated: JUN 14 2023 11:56 a.m.

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

SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague Associate Justice Lanee S. Cui-David in ruling that: (**1**) respondent's sale of power generated through renewable sources of energy to National Power Corporation (**NPC**) qualifies as zero-rated sales; (**2**) respondent's claim for value-added tax (**VAT**) refund is based on Republic Act (**RA**) No. 9136 or the "Electric Power Industry Reform Act of 2001" (**EPIRA**); (**3**) the submission of the Certificate of Compliance (**COC**) from the Energy Regulatory Commission (**ERC**) is sufficient to comply with the requirements under the EPIRA for the VAT-zero rating incentives; and (**4**) affirmation that respondent is entitled to input VAT refund.

As regards the refundable amount, the *ponencia* applied the ruling of the Supreme Court in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v.*

Commissioner of Internal Revenue[1] (***Chevron***) and computed the same in the following manner:

Excess input VAT attributable to declared zero-rated sales/receipts	₱ 42,442,024.96[2]
Divided by declared zero-rated sales/receipts	2,605,962,736.75
Multiply by valid zero-rated sales/receipts	2,333,185,424.48
Excess input VAT attributable to valid zero-rated sales/receipts	₱ 37,999,435.92

However, I humbly submit that: (**1**) the amount of input tax equivalent to the Bureau of Internal Revenue's (**BIR**'s) grant of refund in the administrative level should be deducted *only after* the determination of the allowable input tax refund and *not prior* to the computation; and, (**2**) the output tax (attributable to zero-rated sales) already charged against the input tax should *still* be deducted *after* the determination of the refundable amount.

In line with the Supreme Court's declaration in *Chevron*, I find it propitious to reiterate my opinion in the *En Banc* case of *Maersk Global Services Centres (Philippines) LTD. v. Commissioner of Internal Revenue*[3] as regards to what I deem to be the more proper steps of computing the amount of refundable input VAT, as follows:

1. Determine the amount of substantiated or valid input VAT;

2. Deduct from the substantiated or valid input VAT any input VAT directly attributable to a specific activity to arrive at the substantiated or valid input VAT not attributable to any activity;

3. Multiply the substantiated or valid input VAT not attributable to any activity by the ratio of Valid Zero-Rated Sales over Total Sales

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1 G.R. No. 215159, 05 July 2022.

2

Description	Amount
Total available input VAT *per* returns	₱ 45,675,483.81
Less: Disallowances *per* ICPA Amended Report	531,947.94
Less: Disallowances *per* verification of the Court in Division	1,388,269.12
Less: Allowable claim for refund as found by the BIR	1,296,022.00
Available input VAT	42,459,244.75
Multiplied by zero-rated sales	2,605,962,736.75
Divided by total sales	2,607,020,040.87
Excess input VAT attributable to declared zero-rated sales/receipts	**42,442,024.96**

3 CTA EB No. 2541 (CTA Case No. 9537), 27 April 2023.

to determine the amount of substantiated or valid input VAT attributable to zero-rated sales;

4. Add to the amount computed in no. 3 any substantiated or valid input VAT directly attributable to zero-rated sales to arrive at the total substantiated or valid input VAT attributable to zero-rated sales; and,

5. Deduct from the total substantiated or valid input VAT attributable to zero-rated sales any input VAT already charged by the taxpayer-claimant against its output VAT liability and any input VAT carried-over instead.

Applying the foregoing, the refundable input VAT would be computed to be:

Available input VAT per returns	₱ 45,675,483.81[4]
Less: Disallowances *per* ICPA Amended Report	531,947.94
Less: Disallowances *per* verification of the Court in Division	1,388,269.12
Valid creditable input VAT	43,755,266.75
Divided by total sales/receipts	2,607,020,040.87[5]
Multiply by valid zero-rated sales/receipts	2,333,185,424.48[6]
Input VAT attributable to valid zero-rated sales/receipts	39,159,327.13
Less: Output VAT allocated to zero-rated sales/receipts	₱ 109,656.71[7]

4 For the amounts below, please see Exhibit "P-101" of the Final ICPA Report, Division Docket, Volume IV, pp. 1392-1393.

Description	Amount
Input VAT *per* 1st quarter return	₱ 10,418,902.67
Input VAT *per* 2nd quarter return	10,485,491.32
Input VAT *per* 3rd quarter return	9,483,884.56
Input VAT *per* 4th quarter return	16,897,972.31
Add: Beginning balance of input tax deferred on capital goods exceeding ₱1 million from previous quarter	2,166,174.98
Less: Ending balance of input tax deferred to succeeding periods on capital goods	(3,776,942.03)
Total input tax *per* return	**₱ 45,675,483.81**

5

Description	Amount
Total sales *per* 1st quarter return (Division Docket, Volume I, p. 145)	₱ 651,545,376.10
Total sales *per* 2nd quarter return (Division Docket, Volume I, p. 183)	647,175,150.46
Total sales *per* 3rd quarter return (Division Docket, Volume I, p. 202)	652,551,394.79
Total sales *per* 4th quarter return (Division Docket, Volume I, p. 220)	655,748,119.52
Total Sales	**₱ 2,607,020,040.87**

6 As found by the First Division in the Decision dated 21 October 2021.

7 See computation in the Decision dated 21 October 2021.

Less: Allowable claim for refund as found by the BIR	1,296,022.00[8]
Excess input VAT attributable to valid zero-rated sales/receipts available for refund	**₱ 37,753,648.42**

The reasons for my above submissions are discussed below, in *seriatim*.

THE INPUT TAX OF ₱1,296,022.00 SHOULD BE DEDUCTED *AFTER* THE DETERMINATION OF INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO VALID-ZERO RATED SALES AND *NOT PRIOR* THERETO.

From the *ponencia*'s computation, to arrive at the excess input VAT attributable to declared zero-rated sales/receipts, the input tax of ₱1,296,022.00 (equivalent to the BIR's grant of refund) was already deducted. To my mind, however, excluding the said amount will unwittingly distort the supposed proper computation. It must be pointed out that the input tax granted pertains to the importation of goods other than capital goods. These purchases are directly related to the sales made for that period. Unfortunately, there is no clear distinction if these sales refer to taxable sales or zero-rated sales. Being so, I am of the opinion that it will be more logical to include this amount in the computation of input VAT to proportionately allocate them between the valid zero-rated sales and the total sales.

Additionally, if the Court will, at the outset, exclude the said amount, the Court will necessarily grant an input tax refund of ₱136,130.78 which is *not* attributable to valid zero-rated sales. The amount is computed as follows:

Deducted input VAT	₱ 1,296,022.00
Divided by total sales/receipts	2,607,020,040.87
Multiply by valid zero-rated sales/receipts	2,333,185,424.48
Deducted input VAT attributable to valid zero-rated sales/receipts	1,159,891.21
Deducted input VAT attributable to others (taxable sales and invalid zero-rated sales) that should be disallowed	₱ 136,130.78

[8] See Annex V of the Petition for Review, Division Docket, Volume I, p. 272.

A PORTION OF THE INPUT VALUE-ADDED TAX (VAT) WHICH WAS APPLIED TO OUTPUT VAT SHALL *STILL* BE DEDUCTED FROM THE RESULTING INPUT VAT ATTRIBUTABLE TO VALID ZERO-RATED SALES.

Following the *ponencia*'s interpretation of the *Chevron* ruling, the output tax of ₱109,656.71 (attributable to zero-rated sales) was not deducted from the excess input tax. I, nevertheless, submit that a portion thereof (which was applied to output VAT) should still be deducted. To emphasize, this deduction is *not* determinative of the "excess" input VAT which, according to *Chevron*, has no basis in law and jurisprudence. However, I deem it proper for said deduction to be made because the same was already utilized and applied to output VAT. The Supreme Court pointed out in *Chevron*[9], that one of the requisites for the refund or issuance of tax credit certificate is that input tax should not be applied against output tax, to wit:

> ...
>
> Thus, to be refunded or issued a tax credit certificate, the following must be complied with: (1) the input tax is a creditable input tax due or paid; (2) the input tax is attributable to the zero-rated sales; (3) the input tax is not transitional; (4) **the input tax was not applied against the output tax**; and (5) in case the taxpayer is engaged in mixed transactions, *i.e.*, VAT-able, exempt, and zero-rated sales and the input taxes cannot be directly and entirely attributable to any of these transactions, only the input taxes proportionately allocated to zero-rated sales based on sales volume may be refunded or issued a tax credit certificate.
>
> ...

From the foregoing disquisition, the amount of ₱109,656.71 should then be deducted from the resulting amount of the substantiated input VAT attributable to valid zero-rated sales (or after applying the ratio of valid zero-rated sales over the total sales) as the same was already applied by CBK against its output VAT. In this manner, the computation would be compliant with *Chevron* as shown below:

> ...
>
> *First*, Section 112 (A) of the Tax Code merely requires that the input tax claimed for refund or the issuance of tax credit certificate "**has not been applied against [the] output tax[.]**" Section 4.112-1 (a) of RR No. 16-2005 states that "**[t]he input tax that may be subject of the claim shall**

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[9] Supra at note 1; Citation omitted and emphasis supplied.

exclude the portion of input tax that has been applied against the output tax."...[10]

...

Accordingly, I vote to DENY the Petition for Review of petitioner Commissioner of Internal Revenue for lack of merit and partially GRANT CBK Power Company Limited's prayer for tax refund or Tax Credit Certificate (**TCC**) for its input VAT in the amount of ₱37,753,648.42.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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10 Citation omitted, emphasis and italics in the original text.