REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2801** (CTA Case No. 10137)
	Present:
- versus -	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
CBK POWER COMPANY LIMITED, *Respondent.*	Promulgated: JAN 17 2025 4:18 pm

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DECISION

ANGELES, *J.*:

Before the Court *En Banc* is a ***Petition for Review***[1] filed on October 19, 2023 by petitioner Commissioner of Internal Revenue (CIR), seeking the partial reconsideration of the ***Decision***[2] dated May 10, 2023, and ***Resolution***[3] dated September 14, 2023, promulgated by the First Division and Special First Division of this Court (the "Court in Division"), respectively, in CTA Case No. 10137, entitled "*CBK Power Company Limited vs. Commissioner of Internal Revenue*", and the denial of herein respondent's claim for refund of its unutilized or excess creditable input value-added tax (VAT) for the period January 1, 2017 to March 31, 2017.

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[1] Petition for Review dated October 18, 2023, EB Docket, pp. 8-18.
[2] Decision dated May 10, 2023, EB Docket, pp. 27-57.
[3] Resolution dated September 14, 2023, EB Docket, pp. 59-61.

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue vested with authority to act as such, including *inter alia*, the power to decide, approve and grant claims for refund or credit, with office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City where he may be served with summons and other court processes.[4]

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 National Power Corporation (NCP)-CBK Compound, Purok 6, National Highway, Brgy. San Juan, Kalayaan 4015, Laguna. It is registered with the Securities and Exchange Commission (SEC) with Registration Number A200004027. As a special purpose entity, its sole purpose is to engage in all aspects of (a) design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of the Kalayaan II pumped-storage hydroelectric power plant, the New Caliraya Spillway, and other assets to be 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. CBK is registered with the BIR as a VAT taxpayer with Tax Identification Number (TIN) No. 205-760-474-00000.[5]

THE FACTS

On November 6, 1998, NPC entered into a Build-Rehabilitate-Operate-Transfer Agreement (BROT Agreement) with Industrias Metalurgicas Pescarmona, S.A. (IMPSA), a corporation duly organized and existing under the laws of Argentina, whereby IMPSA shall undertake to finance, design, build, rehabilitate, upgrade, expand, commission, test, operate, maintain and manage the Caliraya, Botocan and Kalayaan hydroelectric power plant complex under the terms and conditions set forth in the BROT Agreement.[6]

On September 20, 2000, pursuant to its primary business purpose, CBK through the Second Accession Undertaking became a party to the BROT Agreement together with NPC, IMPSA and CBK Power Corporation. By virtue of the Second Accession Undertaking,

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[4] *Supra* note 2, p. 28.
[5] *Supra* note 2, pp. 27-28.
[6] *Supra* note 2, p. 28.

CBK shall assume and undertake the responsibility to rehabilitate, construct, operate, and maintain the Caliraya, Botocan, and Kalayaan hydroelectric power plants and other civil structures for the purpose of generating electricity for NPC. In consideration thereof, NPC shall pay CBK Capital Recovery Fees, Operation and Maintenance Fees and other amounts specified in the BROT Agreement.[7]

On August 18, 2000, CBK entered into an agreement with IMPSA Construction Corporation, designated as a Turnkey Contract, whereby IMPSA Construction Corporation as Contractor represented itself to be technically and financially capable of undertaking the design, engineering, procurement, supply of all plant and materials, rehabilitation, construction, commissioning, testing, completion and handover of the power plants, together with the civil structures, access roads and other works as specified in the BROT Agreement among CBK, NPC and IMPSA, on a fixed price, turnkey basis.[8]

On March 29, 2019, CBK filed through its Chief Financial Officer, Mr. Fernando J. De La Paz, an administrative claim for refund of even date 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 cash refund of unutilized or excess creditable input taxes in the amount of ₱11,400,720.71, arising from CBK's 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, and local purchases and importation of capital goods exceeding ₱1 million, attributable to zero-rated sales of electricity to NPC for the period January 1, 2017 to March 31, 2017, pursuant to Sections 108(B)(7), and 112(A) of the National Internal Revenue Code of 1997, as amended (Tax Code), and BIR Ruling No. DA-146-2006 dated March 17, 2006. On the same date, CBK likewise submitted a Sworn Certification executed by Mr. De La Paz, attesting to the completeness of the documents submitted and a signed BIR Revised Checklist of Mandatory Requirements for VAT Refund.[9]

On June 28, 2019, CBK received the Letter dated April 26, 2019 from CIR, signed by Ms. Teresita M. Dizon, OIC-Assistant Commissioner (ACIR), Large Taxpayers Service, wherein, out of the total input VAT refund claim of ₱11,400,720.71, she recommended the issuance of a refund in the amount of ₱1,073,020.95, and disallowed the amount of ₱10,327,699.76.[10]

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[7] *Supra* note 2, pp. 28-29.
[8] *Supra* note 2, p. 29.
[9] *Id.*
[10] *Supra* note 2, pp. 29-30.

In order to appeal the partial denial of CBK's administrative claim for refund, CBK filed a *Petition for Review*[11] on July 26, 2019, docketed as CTA Case No. 10137, praying that its claim for refund in the amount of ₱10,327,699.76 be granted.

After trial on the merits, the Court in Division promulgated the assailed *Decision* dated May 10, 2023, partially granting CBK's *Petition,* as follows:

> **WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED.** Accordingly, [CIR] is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of [CBK] in the amount of **₱10,138,275.14**, representing its unutilized input VAT attributable to its valid zero-rated sales for the first quarter of CY 2017.
>
> **SO ORDERED**.

Based on the assailed *Decision*, the refundable amount of ₱10,138,275.14 was derived by reducing from the input VAT claim of ₱10,327,699.76 the disallowances per the Court in Division's evaluation in the amount of ₱173,057.50 and the commissioned Independent Certified Public Accountant's findings amounting to ₱16,367.12, or a total amount of ₱189,424.62. As can be gleaned from the assailed *Decision*, the reasons for disallowances are CBK's failure to comply with the substantiation requirements and inclusion of input tax which is outside the scope of claim for VAT refund.

Aggrieved by the Court in Division's *Decision*, the CIR filed on June 6, 2023 a *Motion for Partial Reconsideration (Re: Decision dated 10 May 2023)*[12] which was denied in the assailed *Resolution* dated September 14, 2023, the dispositive portion of which provides:

> **WHEREFORE**, premises considered, [CIR's] **Motion for Partial Reconsideration (Re: Decision dated 10 May 2023)** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.

On October 4, 2023, the CIR filed with the Court *En Banc* a *Motion for Extension of Time to File Petition for Review*[13] which was granted pursuant to the *Minute Resolution*[14] dated October 6, 2023.

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[11] Petition for Review dated July 25, 2019, Division Docket – Vol. I, pp. 10-39.
[12] Motion for Partial Reconsideration (Re: Decision dated 10 May 2023) dated June 6, 2023, Division Docket – Vol. IV, pp. 1894-1901.
[13] Motion for Extension of Time to File Petition for Review dated October 4, 2023, EB Docket, pp. 1-5.
[14] EB Docket, p. 7.

Thereafter, on October 19, 2023, the CIR filed the instant *Petition* praying for the denial of CBK's entire claim for refund for utter lack of merit.

On October 27, 2023, the CIR filed a *Motion to File and Submit (Re: Petition for Review with the Correct Copy Furnished and Submit Proof of Service)*[15], wherein it was alleged that the file copy of the *Petition* was furnished to the law firm of Salvador Llanillo & Bernardo instead of Atty. Carmencita P. Victorino, the handling counsel of CBK. The said *Motion* was noted and the attached corrected copy of the *Petition* was admitted pursuant to the *Minute Resolution*[16] dated December 5, 2023.

In the same *Minute Resolution* dated December 5, 2023, CBK was also ordered to file its comment on the instant *Petition*. On January 5, 2024, CBK filed a *Comment on Petition for Review (dated October 18, 2023)*[17] which was noted pursuant to the *Minute Resolution*[18] dated January 17, 2024.

Accordingly, on January 17, 2024, the present *Petition* was submitted for decision.[19]

ISSUE

Petitioner CIR raises the following error[20] allegedly committed by the Court in Division, to wit:

> THE HONORABLE COURT ERRED IN RULING THAT [CBK] IS ENTITLED TO THE CLAIM FOR REFUND OF ALLEGED [CBK's] DOMESTIC PURCHASES OF GOODS OTHER THAN CAPITAL GOODS, DOMESTIC PURCHASES OF SERVICES, PAYMENTS FOR SERVICES RENDERED BY NON-RESIDENTS, AND DOMESTIC PURCHASES OF CAPITAL GOODS EXCEEDING ₱1 MILLION, ATTRIBUTABLE TO [CBK's] ZERO-RATED SALES OF ELECTRICITY TO THE NPC FOR THE PERIOD JANUARY 1, 2017 TO MARCH 31, 2017.

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[15] Motion to File and Submit (Re: Petition for Review with the Correct Copy Furnished and Submit Proof of Service) dated October 26, 2023, EB Docket, pp. 62-65.
[16] EB Docket, p. 119.
[17] Comment on Petition for Review (dated October 18, 2023) dated January 5, 2024, EB Docket, pp. 120-127.
[18] EB Docket, p. 132.
[19] *Id.*
[20] *Supra* note 1, p. 11.

ARGUMENTS OF THE PARTIES

CIR's Arguments

In his *Petition*, the CIR mainly argues that CBK is a Renewable Energy (RE) Developer engaged in the business of generation of electricity through its hydropower plant. According to the CIR, failure to register as an RE Developer does not prove that CBK is not an RE Developer. The CIR posits that the fact that CBK functions as such is safe to say that it is an RE Developer.

Consequently, the CIR contends that pursuant to Section 15 of Republic Act (RA) No. 9513[21] or the "Renewable Energy Act of 2008" (RE Law), CBK as an RE developer is entitled to zero-rated VAT on its purchases of local supply of goods, properties and services. Therefore, no output tax should be shifted to or passed on to CBK with respect to its purchases of goods and services. Conversely, the CIR asserts that there should be no input tax to be refunded from said purchases and that the proper party entitled to seek the tax refund is CBK's suppliers.

Finally, the CIR claims that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer-claimant and liberally in favor of the taxing authority. In CBK's case, the CIR insists that CBK failed to substantiate its claim, hence, the same must be denied.

CBK's Arguments

In its *Comment*, CBK counter-argues that the CIR's arguments in the instant *Petition* are the same arguments previously articulated and duly considered in the assailed *Decision* and *Resolution*. Thus, CBK prays that the instant *Petition* be denied for lack of merit.

RULING OF THE COURT *EN BANC*

The *Petition for Review* is bereft of merit.

The Court En Banc has jurisdiction to take cognizance over the Petition.

[21] Approved on December 16, 2008.

Section 2(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides for the cases within the jurisdiction of the Court *En Banc*, thus:

> RULE 4
> JURISDICTION OF THE COURT
>
> xxx
>
> SEC. 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 Division 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; (Emphasis supplied)

As the *Petition for Review* filed by the CIR before the Court *En Banc* prays for the reversal of the assailed *Decision* and *Resolution* both promulgated by the Court in Division, the Court *En Banc* has appellate jurisdiction to review by appeal the subject matter of the instant *Petition* pursuant to Section 2(a)(1), Rule 4 of the RRCTA.

As regards the timeliness of filing the *Petition*, Section 3(b), Rule 8 of the RRCTA, provides:

> RULE 8
> PROCEDURE IN CIVIL CASES
>
> xxx
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> SEC. 3. Who may appeal; period to file petition. –
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> xxx
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> (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**. (Emphasis supplied)

A perusal of the records shows that on September 19, 2023, the CIR received the assailed *Resolution,* denying his *Motion for Partial Reconsideration (Re: Decision dated 10 May 2023)* filed before the Court in Division.[22]

Pursuant to Section 3(b), Rule 8 of the RRCTA, the CIR has fifteen (15) days from September 19, 2023 or until October 4, 2023, within which to appeal the assailed *Resolution* with the Court *En Banc.* On October 4, 2023, the CIR filed a *Motion for Extension of Time to File Petition for Review* which was granted pursuant to the *Minute Resolution* dated October 6, 2023, wherein the CIR was given an additional period of fifteen (15) days from October 4, 2023 or until October 19, 2023 within which to file its petition for review.

On October 19, 2023, the CIR timely filed the instant *Petition for Review*. Therefore, the Court *En Banc* has validly acquired jurisdiction to take cognizance over the present *Petition.*

We shall now rule on the substantive aspect of the instant *Petition.*

The crux of the controversy centers on whether or not CBK is an RE Developer which would warrant the application of the provisions of the RE Law, particularly, on the VAT incentives granted to RE Developers. We answer in the negative.

CBK is not a registered RE Developer entitled to avail of the VAT incentive granted under the RE Law.

In the *Petition*, the CIR claims that CBK is an RE Developer regardless of its failure to register as such with the Department of Energy (DOE) considering that it is engaged in the business of generation of electricity through its hydropower plant.

The CIR likewise insists that since CBK is an RE Developer as contemplated under the RE Law, its purchases of local supply of goods, properties and services necessary for the development, construction and installation of its plant facilities, including the whole process of

[22] Notice of Resolution dated September 18, 2023, EB Docket, p. 58.

exploring and developing RE sources up to its conversion into power, are subject to zero-percent (0%) VAT rate pursuant to the RE Law. As such, since CBK's purchases are zero-rated, it follows that no input tax should be paid by CBK on its purchases. Therefore, CBK is not entitled to a refund of its alleged excess or unutilized input VAT arising from its purchases.

We do not agree.

In the recent case of *CBK Power Company Limited vs. Commissioner of Internal Revenue*[23] (the *CBK Case),* it was held that registration with the DOE is a pre-requisite for the availment of the VAT incentive provided under Section 15 of the RE Law, thus:

> **The core of the dispute in this case is whether CBK is entitled to a tax refund** in the amount of PHP50,060,766.08 representing unutilized or excess creditable input VAT paid or incurred by CBK in its domestic purchases of goods other than capital goods, importations of goods other than capital goods, domestic purchases of services, payments for services rendered by non-residents, purchases of capital goods not exceeding PHP1,000,000.00, and purchases of capital goods exceeding PHP1,000,000.00 for the period of January 1, 2012 to December 31, 2012, which are all attributable to zero-rated sales for the period of January 1, 2012 to December 31, 2012. In ruling that CBK is not entitled to a tax refund, the CTA En Banc agreed with the CTA Special First Division that the aforementioned sales are subject to zero-rated VAT because CBK is an RE Developer and is, thus, covered by the tax incentives which Republic Act No. 9513 grants to all RE Developers, without exception. The CTA En Banc disagreed with CBK's contention that CBK is not entitled to zero-rated VAT for its transactions because it and its suppliers did not register with the DOE. **For the CTA En Banc, this registration is not a pre-requisite for entitlement to the tax incentives under Republic Act No. 9513**.
>
> **Thus, the key to resolving this case is determining <u>whether an RE Developer's registration with the DOE is a pre-requisite for entitlement to the VAT incentive provided by Republic Act No. 9513</u> such that an RE Developer's decision not to register will mean that its transactions will be subject to 12% VAT. <u>*The Court rules that it is*</u>**.
>
> Section 15 of Republic Act No. 9513 states in part:
>
> > ***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, **<u>as duly certified by the</u>**

[23] G.R. No. 247918. February 1, 2023.

> **DOE**, in consultation with the BOI, shall be entitled to the following incentives:
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> xxx
>
> (g) Zero Percent Value-Added Tax Rate – The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.
>
> All RE Developers shall be entitled to zero-rated value-added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.
>
> This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.

Further, Sections 25 and 26 of Republic Act No. 9513 provide:

> ***SECTION 25. Registration of RE Developers and Local Manufacturers, Fabricators and Suppliers of Locally-Produced Renewable Energy Equipment.*** – RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the DOE, through the Renewable Energy Management Bureau. **Upon registration, a certification shall be issued to each RE Developer and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act.**
>
> ***SECTION 26. Certification from the Department of Energy (DOE).*** – **All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy Management Bureau.**
>
> The DOE, through the Renewable Energy Management Bureau shall issue said certification fifteen (15) days upon request of the renewable energy developer or manufacturer, fabricator or supplier: **Provided, That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned.**
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> xxx

> **It was, therefore, incorrect for the CTA En Banc to conclude that the mere fact that an entity is an RE Developer automatically entitles such entity to the incentives provided in Republic Act No. 9513**. (Emphasis Supplied)

As gleaned from the foregoing, registration of an RE Developer with the DOE is a requirement before the former may avail of the tax incentives under the RE Law. This is also consistent with the Implementing Rules and Regulations (IRR) of the RE Law promulgated by the DOE where availment of the incentives was conditioned upon the RE Developer's registration/accreditation with the DOE, among others, to wit:

> ***SECTION 13. Fiscal Incentives for Renewable Energy Projects and Activities.***
>
> **DOE-certified existing and new RE Developers of RE facilities**, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, **shall be entitled to the following incentives**:
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> xxx
>
> **G. Zero Percent Value-Added Tax Rate**
>
> The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:
>
> (a) Sale of fuel from RE sources or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using such as fuel cells and hydrogen fuels;
>
> (b) Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers; and
>
> (c) Whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.
>
> xxx
>
> ***SECTION 18. Conditions for Availment of Incentives and Other Privileges. —***
>
> **A. Registration/Accreditation with the DOE**

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

(1) **DOE Certificate of Registration** — issued to an RE Developer holding a valid RE Service/Operating Contract.

xxx

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

xxx

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.

xxx

For this purpose, the DOE shall, within six (6) months from the effectivity of this IRR, issue guidelines on the **procedures and requirements for the availment of incentives** based on specific criteria, such as, but not limited to:

(1) Compliance with Obligations - The RE Developer or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall observe and abide by the provisions of the Act, this IRR, the applicable provisions of existing Philippine laws, and take adequate measures to ensure that its obligations thereunder as well as those of its officers are faithfully discharged;

xxx

(3) Compliance with Pre-Registration/Registration Conditions – The RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall comply with all the pre-registration and registration conditions as required by the DOE;

xxx

RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment **who comply with the above requirements** shall be deemed in good standing and **shall therefore be qualified to avail of the incentives as provided for in the Act and this IRR**. (Emphasis Supplied)

Taking into consideration the foregoing, it is therefore clear error on the part of the CIR to conclude that all RE Developers are entitled to the fiscal incentives granted by the RE Law. The law, as enforced through the DOE IRR, is categorical that RE Developers must meet certain standards and must register with the DOE before they can be considered as RE Developers duly entitled to fiscal incentives.[24]

In the *CBK Case,* the Supreme Court also held that the express language of the RE Law, coupled with the DOE and the BIR's contemporaneous interpretations, lead to the conclusion that the fiscal incentives under the RE Law may only be availed of after registration of the RE Developer with the DOE, among other requirements, *viz:*

> In this regard, Part III, Rule 5, Section 13 (G) of the IRR also provides that the BIR, along with the DOE and the BOI, shall formulate the mechanism for RE Developers to avail of the fiscal incentives under Republic Act No. 9153. Further, **Part III, Rule 5, Section 18 (D) directs the BIR to promulgate revenue regulations governing the grant of fiscal incentives**. On June 22, 2022, **the BIR promulgated Revenue Regulations No. 7-2022 on Tax Incentives under the Renewable Energy Act of 2008 and the Policies and Guidelines for the Availment Thereof (RR No. 7-2022).** Section 3 of RR No. 7-2022 states in part:
>
> > 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 [Republic Act No. 9513] may be availed of**.
>
> Consistent with the DOE IRR, **Section 3 lists the following certifications which must be obtained before an RE Developer can avail of the fiscal incentives under Republic Act No. 9153**: **DOE Certificate of Registration**, **DOE Certificate of Accreditation**, **Certificate of Endorsement by the DOE**, Registration with the BOI, and Certificate of Income Tax Holiday Entitlement. Moreover, the **BIR clarifies in RR No. 7-2022**:
>
> > Accordingly, **local suppliers/sellers of goods properties, and services of duly-registered RE developers should not pass on the 12% VAT on the latter's purchases** of goods, properties and services that will be used for the development, construction and installation of their power plant facilities. This includes 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

[24] *Id.*

> contractors. **The local suppliers of goods, properties, and services shall require from the RE Developer a copy of the latter's BOI Registration and DOE Registration for purposes of availing the zero percent (0%) VAT incentive.**
>
> 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 Supplied)

In the case at bar, records reveal that CBK has been consistent in its position that it has not registered with the DOE and has not availed of any of the incentives under the RE Law. This is evident through CBK's presentation and submission of the following certifications:

1	DOE Certification dated March 26, 2019[25]	Certifying that CBK (a) is not registered with the DOE under the RE Law; (b) has not availed of incentives under the RE Law; and (c) has no pending application for registration with the DOE.
2	DOE Certification dated May 28, 2019[26]	
3	DOE Certification dated July 25, 2019[27]	
4	DOE Certification dated August 15, 2019[28]	
5	DOE Certification dated February 5, 2020[29]	

Considering that registration with the DOE is a pre-requisite for the availment of tax incentives under the RE Law, We rule that CBK is not entitled to avail of the VAT incentive granted therein.

Accordingly, since CBK's VAT refund claim is not anchored on the RE Law, the Court in Division correctly applied Section 108(B)(7) of the Tax Code in determining whether CBK is entitled to its claim for refund, which provides:

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[25] Exhibit "P-5", Division Docket – Vol. III, p. 1361.
[26] Exhibit "P-6", Division Docket – Vol. III, p. 1362.
[27] Exhibit "P-7", Division Docket – Vol. III, p. 1363.
[28] Exhibit "P-19", Division Docket – Vol. III, p. 1613.
[29] Exhibit "P-20", Division Docket – Vol. III, p. 1614.

> SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. –
>
> xxx
>
> (B) ***Transactions Subject to Zero Percent (0%) Rate***. – The following services performed in the Philippines by VAT-registered persons shall be **subject to zero percent (0%) rate**:
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> xxx
>
> (7) **Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels**. (Emphasis Supplied)

Relative thereto, the Court *En Banc* also stresses that the CIR did not dispute the BIR Ruling No. DA-146-2006 dated March 17, 2006[30], which confirmed that the sale of CBK to NPC of electricity generated through hydropower is VAT zero-rated under the afore-cited Section 108(B)(7) of the Tax Code. To reiterate, the relevant portion of the BIR Ruling states:

> Based on the foregoing consideration, you now request for an opinion as to **whether or not the fees billed by CBK to NPC** composed of Capital Recovery Fees and Operation and Maintenance Fees for the sale of electricity by CBK generated through hydropower, **are subject to zero percent (0%) VAT rate pursuant to the provisions of Section 108(B)(7) of the Tax Code of 1997**, xxx.
>
> From the foregoing circumstances, there is no dispute that CBK is primarily organized to engage in power generation business, specifically in hydropower generation, i.e., generating/supplying electric power generated through hydropower, a renewable source of energy. This is fortified by the Certificate of Compliance issued by the Energy Regulatory Commission (ERC) that CBK is indeed a hydropower generation company. Thus, the billings of CBK for its sale of electricity to NPC, designated under the BROT Agreement as Capital Recovery Fees and O&M Fees, are subject to zero percent (0%) VAT.
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> xxx
>
> 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**. xxx (Emphasis Supplied)

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[30] Exhibit "P-17", Division Docket – Vol. III, pp. 1606-1611.

Since the CIR failed to controvert the said BIR Ruling, the Court *En Banc* agrees with the Court in Division that CBK's sale of electricity, generated through hydropower, to NPC is qualified for VAT zero-rating pursuant to Section 108(B)(7) of the Tax Code and the aforementioned BIR Ruling.

Considering that the CIR never questioned the amount granted by the Court in Division to CBK, the Court *En Banc* adopts the findings of the Court in Division that CBK is entitled to a refund or issuance of tax credit certificate in the amount of ₱10,138,275.14, representing its unutilized input VAT attributable to its valid zero-rated sales for the first quarter of calendar year 2017.

Finally, the Court emphasizes that while tax refunds are strictly construed against the taxpayer, the Government should not resort to technicalities and legalisms, much less frivolous appeals, to keep the money it is not entitled to at the expense of the taxpayers. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.[31]

In view of the foregoing and there being no new matter or substantial issue raised in the CIR's *Petition*, the Court finds no compelling reason to reverse, amend, or modify the assailed *Decision* and *Resolution*.

WHEREFORE, premises considered, the CIR's *Petition for Review* filed on October 19, 2023, is hereby **DENIED** for lack of merit. Accordingly, the *Decision* dated May 10, 2023, and *Resolution* dated September 14, 2023, both promulgated in CTA Case No. 10137, are **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

[31] *Commissioner of Internal Revenue v. Lucio L. Co*, G.R. No. 241424, February 26, 2020.

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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2801** (CTA Case No. 10137)
- versus -	Present: **DEL ROSARIO,** ***P.J.*****, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** ***JJ.***
CBK POWER COMPANY LIMITED, Respondent.	Promulgated: JAN 17 2025 4:18 pm

x - x

SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur in the denial of the *Petition for Review* filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) for lack of merit.

However, with due respect, I espouse a different view as regards the computation of the amount of excess and unutilized input value-added tax (**VAT**) attributable to zero-rated sales (or the refundable amount before deducting the amount of ₱1,073,020.95 already granted *per* Letter dated April 26, 2019[1]).

On 05 July 2022, the Supreme Court issued its decision in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal*

[1] Exhibit "P-18", Division Docket, Volume III, p. 1612.

Revenue[2] (**Chevron**) where the High Court provided pivotal guidelines for computing the refundable excess and unutilized input VAT attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions, to wit -

> ...
> [T]**he 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.
> ...

It bears noting that in declaring that it is not for the Court of Tax Appeals (**CTA**) to rule on the sufficiency or substantiation of input taxes in a refund claim under Section 112(A) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, the Supreme Court did not expressly state that this rule applies only to the second option. In other words, the Supreme Court plainly ruled that the Court is precluded from inquiring into the nature and substance of a taxpayer's input VAT from various sources for the purpose of determining the ratable portion allocable to zero-rated sales and chargeable against the "Output VAT Still Due". This ruling was made without specifying any distinctions or exceptions. Settled is the rule that where the law does not distinguish, courts should not distinguish.[3] *Ubi lex non distinguit, nec nos distinguere debemos.*

Accordingly, since the Supreme Court's 'no judicial assessment rule' enunciated in *Chevron* already forms part of the law on the matter (*i.e.*, Section 112[A] of the NIRC of 1997, as amended, which governs claims for refund or tax credit of excess and unutilized input VAT attributable to zero-rated or effectively zero-rated sales) as of its effective date, and, as aforesaid, this pronouncement does not distinguish between a taxpayer-claimant's two

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2 G.R. No. 215159, 05 July 2022; Citation omitted, emphasis and underscoring supplied.
3 *Pension and Gratuity Management Center (PGMC) v. AAA*, G.R. No. 201292, 01 August 2018.

(2) options with respect to input VAT attributable to zero-rated sales. Hence, this Court should not also make such a distinction.

Following this pronouncement, I am thus constrained to make a re-computation of the refundable input VAT in this wise –

Table 1. Input VAT Allocation	**Amount (a)**		**Allocation Factor (c) = (a) / (b)**	**Allocated Declared Input VAT (e) = (c) x (d)**		**Allocated Substantiated Input VAT (g) = (c) x (f)**		**Difference (h) = (e) – (g)**
Zero-Rated Sales	₱698,183,110.56		99.89%	₱11,479,424.22		₱11,290,205.57		₱189,218.65
VAT-able Sales	759,993.54		0.11%	12,495.70		12,289.73		205.97
Total Sales	**₱698,943,104.10**	(b)	100.00%	**₱11,491,919.92**	(d)	**₱ 11,302,495.30**	(f)	**₱189,424.62**

Table 2. Computation of Output VAT Still Due	**VAT-able Sales**
Output VAT	₱ 91,199.22
Less: Allocated Declared Input VAT	12,495.70
Output VAT Still Due	**₱78,703.52**

Table 3. Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales

Declared Input VAT allocated to Declared Zero-Rated Sales	₱11,479,424.22
Less: Total Output VAT Still Due	78,703.52
Excess and Unutilized Input VAT attributable to Declared Zero-Rated Sales (a)	**₱11,400,720.70**
Substantiated or Valid Input VAT (after deducting disallowances)[4] (b)	**11,302,495.30**
Substantiated or Valid Input VAT deemed attributable to Zero-Rated Sales [whichever is lower between (a) and (b)]	**₱11,302,495.30**
Divided by Declared Zero-Rated Sales *per* 1st Quarterly VAT Return for TY 2017	698,183,110.56
Multiplied by Valid Zero-Rated Sales *per* 1st Quarterly VAT Return for TY 2017	698,183,110.56
Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales	**₱11,302,495.30**
Less: Input VAT Refund Partially Granted by the BIR	1,073,020.95
Additional Input VAT to be Refunded	**₱10,229,474.35**

Having thus established that there is an additional refundable excess and unutilized input VAT attributable to a valid zero-rated sales in the increased amount of **₱10,229,474.35**, following the pronouncements in *Chevron* (*i.e.*, the 'no judicial assessment rule' regarding both the computation of "Output VAT Still Due" and the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales"), and since this amount is well within the input VAT claim of ₱10,327,699.76 (remainder after deducting the

4 Out of the "Declared Input VAT" of ₱11,491,919.92 for the 1st Quarter of CY 2017, the First Division disallowed the amount of ₱189,424.62. Thus, the Substantiated Input VAT amounts to ₱11,302,495.30.

The "Substantiated or Valid Input VAT" pertains to the amount worth of invoices or receipts submitted by the taxpayer to the Court for examination and confirmed to be compliant with the substantiation requirement under Sections 113 and 237 of the NIRC of 1997, as amended.

₱1,073,020.95 partially granted by the BIR), respondent CBK Power Company Limited has sufficiently proven its entitlement to a refund or issuance of a Tax Credit Certificate (**TCC**) in the said increased amount.

Very recently, on 04 October 2024 and 21 October 2024, respectively, the Court *En Banc* promulgated its decisions in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[5] and *Commissioner of Internal Revenue v. Stefanini Philippines, Inc.*[6], adjusting the computation of the refundable amount of excess and unutilized input VAT attributable to valid zero-rated sales following the Supreme Court's pronouncements in *Chevron*.

All told, I vote to **DENY** petitioner Commissioner of Internal Revenue's Petition for Review for lack of merit; and thereby **AFFIRM with MODIFICATION** the First Division's Decision dated 10 May 2023 and Resolution dated 14 September 2023.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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5 With the Court *En Banc* voting unanimously. See CTA EB Case No. 2764 (C.T.A. Case No. 9154).
6 With the Court *En Banc* voting unanimously. See CTA EB Case No. 2753 (C.T.A. Case No. 10188).