REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2919** (CTA Case No. 10434)
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *JJ.*
MONTE SOLAR ENERGY, INC. *Respondent.*	Promulgated: APR 15 2025 4:02pm

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue (**CIR**), assailing the *Decision* dated January 18, 2024[2] (**assailed *Decision***) and the *Resolution* dated May 2, 2024[3] (**assailed *Resolution***) of the Court's Special First Division (Court in Division), which partially granted respondent's claim for a refund of unutilized input value-added tax (**VAT**) attributable to zero-rated sales for the first (1st) to fourth (4th) quarters of calendar year (**CY**) 2018 in the amount of ₱4,128,580.59.

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[1] *En Banc (EB)* Docket, pp. 7–23.

[2] *Id.* at 31–73, *Petition for Review*, Annex "A"; Penned by Associate Justice Marian Ivy F. Reyes-Fajardo, with Presiding Justice Roman G. del Rosario and Associate Justice Catherine T. Manahan concurring.

[3] *Id.* at 75–79, *Petition for Review*, Annex "B".

THE PARTIES

Petitioner Monte Solar Energy, Inc. is a domestic corporation, duly organized and existing under Philippine laws.[4] It is registered with the Bureau of Internal Revenue (**BIR**)-Revenue District Office (**RDO**) No. 076 as a VAT taxpayer, under Taxpayer Identification Number (**TIN**) 008-828-119-000.[5] It is also registered with the Department of Energy (**DOE**)[6] and the Board of Investments (**BOI**) as a Renewable Energy (**RE**) Developer for an 18 MW DC Monte Solar Energy Project (Bais Solar Power Plant) [7] under Republic Act (**RA**) No. 9513, otherwise known as the "Renewable Energy Act of 2008." Likewise, the Energy Regulatory Commission (**ERC**) certified that petitioner owns and operates the Bais Solar Power Plant, located in Barangay Tamisu, Bais City, Negros Occidental,[8] which generates energy from renewable resources.[9]

Respondent is the duly appointed Commissioner of the BIR, vested under the law with the authority to carry out the duties of said office, including, among others, the power to decide, approve, and grant refunds of unutilized input VAT. He may be served summons, pleadings, and other processes of this Court at his office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[10]

THE FACTS

The relevant facts, as found by the Court in Division, are as follows:

> For the 1st to 4th Quarters of CY 2018, [respondent], through the BIR's Electronic Filing and Payment System (eFPS), filed its Quarterly VAT Returns (BIR Form No. 2550-Q), detailed below:

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4 Division Docket – Vol. II, p. 688, Exhibit "P-1" (Certificate of Filing of Amended Articles of Incorporation issued by the SEC on March 11, 2016).

5 Division Docket – Vol. I, p. 248, *Joint Stipulation of Facts and Issues* (JSFI), Stipulated Facts, par. 2; Division Docket – Vol. II, p. 726, Exhibit "P-2" (BIR Certificate of Registration).

6 Division Docket – Vol. I, p. 248, JSFI, Stipulated Facts, par. 3; Division Docket – Vol. II, p. 727, Exhibit "P-3".

7 Division Docket – Vol. I, p. 248, JSFI, Stipulated Facts, par. 3; Division Docket – Vol. II, p. 728, Exhibit" P-4".

8 Division Docket – Vol. II, p. 737, Exhibit "P-5".

9 Division Docket – Vol. I, p. 248, JSFI, Stipulated Facts, par. 4.

10 *Petition for Review*, The Parties, par. 3 vis-à-vis *Answer*, par. 1, Division Docket – Vol. I, pp. 8 and 119, respectively.

CY 2018	Return Type	Filing Reference No.	Date of Filing
1st quarter	Original	101800024903551	April 25, 2018
2nd quarter	Original	101800026200514	July 25, 2018
3rd quarter	Original	101800027278415	October 15, 2018
4th quarter	Original	101900028723997	January 25, 2019
4th quarter	Amended	101900029715577	March 29, 2019

On June 30, 2020, [respondent] filed with the BIR-Excise Audit Division 1, an administrative claim for refund of its unutilized input VAT in the amount of P4,600,672.57, for the 1st to 4th quarters of CY 2018.

On December 4, 2020, [respondent] received a Notice of Denial signed by Mr. Manuel V. Mapoy, OIC-Assistant Commissioner, Large Taxpayers Service (ACIR Mapoy), denying its administrative claim for refund. In so ruling, ACIR Mapoy explained:

> ...
> Relative thereto, please be informed that pursuant to Republic Act (RA) No. 9513 being a Renewable Energy (RE) Developer, your local purchases of goods and services are free of VAT or subject to VAT rate of 0%. Thus, any input VAT paid to your suppliers of goods and services cannot be claimed from our Office, instead, your company's recourse is to seek reimbursement of the alleged input VAT paid from your suppliers of goods and services (CTA Case No. 8931 Hedcor, Inc. vs. CIR dated October 3, 2017). Hence, your claim is denied for lack of legal basis. *(Citations omitted)*

PROCEEDINGS BEFORE THE COURT IN DIVISION

The narration in the assailed *Decision* is quoted below:

On December 29, 2020, [respondent] filed its Petition for Review, docketed as CTA Case No. 10434, to which [petitioner] posted his Answer on March 15, 2021.

On July 15, 2021, the pre-trial conference was held.

On August 3, 2021, the parties posted their Joint Stipulation of Facts and Issue (JSFI), which was approved through Resolution dated October 25, 2021. On the basis thereof, a Pre-Trial Order (PTO) dated February 7, 2022, was issued. Upon [respondent]'s motion, said PTO was amended on March 29, 2022.

Trial ensued. [respondent] presented as its witnesses: (1) Ms. Katherine O. Constantino, the Court-commissioned Independent Certified Public Accountant (ICPA Constantino); and, (2) Ms. Shela Syed S. Imran, [respondent]'s Acting Chief Finance Officer.

On April 22, 2022, [respondent] filed its Formal Offer of Evidence, to which [petitioner] filed his Comment (Re: Formal Offer of Evidence dated 22 April 2022) on April 27, 2022.

Under Resolution dated June 20, 2022, the Court admitted the pieces of evidence offered by [respondent], except: Exhibits "P-22-1 (Page 2 of 3, Page 3 of 3)," "P-22-2 (Page 3 of 4, Page 4 of 4)," "P-22-3 (Page 3 of 4, Page 4 of 4)," "P-22-4 (Page 3 of 4, Page 4 of 4)," "P-22-5 (Page 3 of 4, Page 4 of 4)," "P-22-6 (Page 3 of 4, Page 4 of 4)," "P-22-7 (Page 3 of 4, Page 4 of 4)," "P-22-8 (Page 3 of 4, Page 4 of 4)," "P-22-9 (Page 3 of 4, Page 4 of 4)," "P-22-10 (Page 3 of 4, Page 4 of 4)," "P-22-11 (Page 3 of 4, Page 4 of 4)," "P-22-12 (Page 3 of 4, Page 4 of 4)," "P-23 to P-59," "P-108 (Page 1 of 2)," "P-112 to P-131," "P-132 (Page 1 of 2)," "P-133," "P-206 (Page 1 of 2)," "P-247 (Page 1 of 2)," "P-307 (Page 3 of 3)," "P-345 (Page 1 of 2)," "P-420 (Page 1 of 2)," "P-422," "P-424 to P-426," "P-427 (Page 2 of 2)," "P-428 (Page 2 of 2)," "P-429 (Page 2 of 2)," "P-458 (Page 1 of 2)," "P-459," "P-462," "P-621 (Page 1 of 2)," "P-657 (Page 1 of 2)," and "P-661," for failure to present the originals thereof for comparison.

On July 8, 2022, [respondent] filed a Motion for Reconsideration (Re: Resolution dated June 20, 2022), to which [petitioner] filed his Comment (Re: Motion for Reconsideration [Re: Resolution dated 20 June 2020]) on July 20, 2022.

Through Resolution dated August 25, 2022, [respondent]'s Motion for Reconsideration was denied. [Respondent] then rested its case.

[Petitioner] presented Revenue Officer Criscela M. Lacsamana as his witness.

On August 31, 2022, [petitioner] filed his Formal Offer of Evidence, to which [respondent] filed its Comment (Re: [petitioner]'s Formal Offer of Evidence dated August 31, 2022) on September 12, 2022.

By Resolution dated October 19, 2022, the pieces of evidence offered by [petitioner] were admitted.

Under Minute Resolution dated December 19, 2022, this case was submitted for decision, considering [petitioner]'s Memorandum filed on November 18, 2022, and [respondent]'s Memorandum, filed on November 28, 2022. *(Citations omitted)*

On January 18, 2024, the Court in Division rendered the assailed *Decision*[11] partially granting respondent's claim for a refund. The dispositive portion of the decision states:

> **WHEREFORE**, the Petition for Review filed on December 29, 2020, by Monte Solar Energy, Inc. is **PARTIALLY GRANTED**. Accordingly, [petitioner] is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of [respondent] the amount of P4,128,580.59, representing the latter's unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of CY 2018.
>
> **SO ORDERED**.

On February 7, 2024, respondent filed a *Motion for Partial Reconsideration (Re: Decision promulgated on 18 January 2024)*[12] to which petitioner filed its *Comment (Re: Respondent's Motion for Partial Reconsideration)* on March 4, 2024.[13]

On May 2, 2024, the Court in Division denied petitioner's *Motion for Partial Reconsideration.*[14] The dispositive portion of the assailed Resolution reads:

> **WHEREFORE**, [petitioner's] Motion for Partial Reconsideration (Re: Decision promulgated on 18 January 2024), filed on February 7, 2024 is **DENIED**, for lack of merit.
>
> **SO ORDERED**.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On May 20, 2024, petitioner filed a *Motion for Extension to File Petition for Review,*[15] which was granted by the Court in a *Minute Resolution* dated May 22, 2024.[16]

On June 5, 2024, petitioner filed his *Petition for Review,*[17] to which respondent filed its *Comment (Re: Petition for Review)* on July 8, 2024.[18]

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11 *EB* Docket, pp. 31–73, *Petition for Review*, Annex "A"; Penned by Associate Justice Marian Ivy F. Reyes-Fajardo, with Presiding Justice Roman G. del Rosario and Associate Justice Catherine T. Manahan concurring.
12 Division Docket – Vol. II, pp. 916–929.
13 *Id.* at 934–944.
14 *EB* Docket, pp. 75–79, *Petition for Review*, Annex "B".
15 *Id.* at 1–4.
16 *Id.* at 6.
17 *Id.* at 7–23.
18 *Id.* at 81–95.

The case was submitted for decision on July 11, 2024.[19]

THE ISSUES

Petitioner alleges that the Court in Division committed the following errors:

> I.
> [THE] HONORABLE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO ITS CLAIM FOR REFUND. RESPONDENT IS NOT THE [PROPER] PARTY TO SEEK FOR TAX REFUND.
>
> II.
> [THE] HONORABLE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO A REFUND OF THE ALLEGED UNUTILIZED INPUT VALUE-ADDED TAX FOR THE 1ST TO 4TH QUARTERS OF CALENDAR YEAR 2018. RESPONDENT FAILED TO PROVE THAT THE SAME REMAINED UNUTILIZED AND WERE NOT CARRIED OVER TO THE SUCCEEDING PERIODS.
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> III.
> [THE] HONORABLE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO A REFUND OF THE ALLEGED UNUTILIZED INPUT VALUE-ADDED TAX FOR THE 1ST TO 4TH QUARTERS OF CALENDAR YEAR 2018. RESPONDENT FAILED TO PROVE THAT ITS INPUT TAX IN THE AMOUNT OF PHP4,128,580.59 IS CREDITABLE AND DIRECTLY ATTRIBUTABLE TO ITS ZERO-RATED SALES.

PETITIONER'S ARGUMENTS

Petitioner contends that respondent is not the proper party to claim a tax refund. Petitioner asserts that as an RE Developer, respondent does not incur output VAT. Consequently, respondent's suppliers—not respondent itself—are entitled to seek the refund.

Petitioner argues that "respondent failed to overcome the burden that the subject input tax being claimed remained unutilized or have not been applied against any output tax for the current and the succeeding quarters." Petitioner states that the information contained in respondent's VAT return for CY 2018 remains subject to petitioner's audit.

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[19] *Id.* at 97.

Petitioner further argues that respondent failed to prove that the input taxes were "directly attributable" to zero-rated sales. Petitioner suggests that the input tax must come from purchases of goods and services that form part of the finished product.

RESPONDENT'S ARGUMENTS

In its *Comment*, respondent counters that the input taxes it claimed for refund correspond to purchases that do not fall within Section 15(g) of RA No. 9513,[20] as not all purchases of an RE developer are zero-rated. Further, respondent states that it has sufficiently proven its entitlement to a refund, that it has proven that the input VAT remains unutilized and was not carried over to subsequent periods, and that its input VAT is attributable to zero-rated sales.

THE COURT *EN BANC'S* RULING

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

The Court En Banc has jurisdiction over the instant case.

Before delving into the merits of the case, the Court *En Banc* shall first determine whether the present Petition for Review was timely filed.

On May 2, 2024, the Court in Division denied petitioner's Motion for Partial Reconsideration through the assailed *Resolution*,[21] which petitioner received on May 8, 2024.

Accordingly, under Section 3(b), Rule 8[22] of the Revised Rules of the Court of Tax Appeals (**RRCTA**), petitioner had fifteen (15) days from receipt of the assailed *Resolution*, or until May 23, 2024, to file a *Petition for Review*.

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20 AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES.

21 *EB* Docket, pp. 75–79, *Petition for Review*, Annex "B".

22 SEC. 3. *Who may appeal; period to file petition.* – ....
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

On May 20, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review*,[23] which was granted in a *Minute Resolution* dated May 22, 2024, giving petitioner until June 7, 2024, to file a *Petition for Review*.[24]

On June 5, 2022, petitioner timely filed the *Petition for Review*.[25]

Having established the timeliness of the *Petition*, the Court *En Banc* also finds that it has jurisdiction to take cognizance of this case under Section 2(a)(1), Rule 4[26] of the RRCTA.

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 National Internal Revenue Code (**NIRC**) of 1997,[27] 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, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, That for a person

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23 *EB* Docket, pp. 1–3.
24 *Id.* at 6.
25 *Id.* at 7–23.
26 *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; xxx.
27 Provision quoted is the wording prior to the amendment of the Tax Reform for Acceleration and Inclusion (TRAIN) Law, which is not yet effective and applicable on the instant claim for refund.

making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

(B) ... ...

(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within ninety (90) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof. x x x

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

Comprehensively, as culled from the foregoing provisions and established jurisprudence - particularly in *Commissioner of Internal Revenue v. Toledo Power Co.*[28] - the requisites for claiming a refund or tax credit of unutilized or excess 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 claim is filed with the BIR within two 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, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[30]

With reference to the taxpayer's registration with the BIR:

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28 G.R. Nos. 195175 & 199645, August 10, 2015 [Per C.J. Sereno, First Division].

29 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010 [Per J. Carpio-Morales, Third Division]; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].

30 *Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019 [Per J. Leonen, Third Division]; *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015 [Per C.J. Sereno, First Division].

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

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), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with 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 and consistent with the records of the case, the Court *En Banc* adopts the findings of the Court in Division as to the first six requisites. Accordingly, the Court *En Banc* affirms the conclusion of the Court in Division that the

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31 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010 [Per J. Carpio-Morales, Third Division]; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].

32 *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005 [Per J. Panganiban, Third Division].

33 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010 [Per J. Carpio-Morales, Third Division]; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].

34 *Id.*

35 *Id.*

36 *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].

37 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010 [Per J. Carpio-Morales, Third Division]; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].

administrative and judicial claims were timely filed, that petitioner is a VAT-registered taxpayer, that respondent is engaged in zero-rated sales, and that petitioner's input taxes are not transitional.

Seventh requisite: Respondent's input taxes are due or paid.

Petitioner asserts that respondent is not the proper party to claim a tax refund. It posits that as an RE developer, no output VAT is being passed on to respondent; thus, respondent's suppliers are the proper parties to seek the tax refund.

Conversely, the respondent maintains that the input taxes it seeks to refund correspond to purchases that do not fall within the scope of Section 15(g) of RA No. 9513, as not all purchases made by an RE developer are zero-rated.

After due consideration, the Court *En Banc* finds in favor of respondent.

Section 15(g) of RA No. 9513 provides:

> Section 15. Incentives for Renewable Energy Projects and Activities. — RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
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> ... ...
>
> (g) Zero Percent Value-Added Tax Rate. — The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.
>
> **All RE Developers shall be entitled to zero-rated value-added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities**.

> This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors. *(Emphasis supplied)*

Accordingly, respondent's local purchases of goods, properties and services necessary for the development, construction, and installation of its plant facilities are subject to zero-rated VAT. Logically, local purchases that do not fall within the scope of Section 15(g) of RA No. 9513 are subject to the regular 12% VAT, which respondent, as the purchaser, would recognize as input tax. Thus, respondent's burden is to prove that its claim for a tax refund pertains to input VAT arising from local purchases not covered by Section 15(g) of RA No. 9513.

As aptly argued by respondent and as found by the Court in Division, respondent successfully established that its local purchases do not fall under Section 15(g) of RA No. 9513.

To substantiate its claim, respondent presented its *Schedule of Local Purchases with Input Tax for CY 2018*,[38] *Summary List of Purchases for CY 2018*,[39] and various documents supporting its input VAT on domestic purchases of goods and services for the 1st to 4th quarters of CY 2018.[40] From these purchases, the Court finds that respondent's input VAT arose from local purchases of goods, properties and services that were not necessary for the development, construction and installation of its plant facilities, and the whole process of exploring and developing renewable energy sources up to their conversion into power. As such, these purchases were not subject to 0% VAT.

Accordingly, the Court *En Banc* affirms the findings of the Court in Division that respondent has sufficiently proven its valid input VAT in the amount of ₱4,176,672.53.

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38 Exhibit "P-20-3."
39 Exhibit "P-20-4."
40 Exhibits "P-23" to "P-663."

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

Petitioner also states that respondent failed to prove that the input taxes claimed are "directly attributable" to zero-rated sales. Petitioner asserts that the input taxes must come from purchases of goods and services that form part of the finished product.

Petitioner's argument fails to impress.

It is well-settled that direct and entire attribution of input taxes to zero-rated or effectively zero-rated sales is not a prerequisite for a tax refund or the issuance of a tax credit certificate. As the Supreme Court clarified in *Commissioner of Internal Revenue v. Toledo Power Co.*:[41]

> Contrary to petitioner's allegation, **the Tax Code does not require direct and entire attribution of input taxes to the zero-rated or effectively zero-rated sales before it may be made subject of a tax refund or claim for tax credit certificate**. In fact, the law only mentions the phrase "directly and entirely" in reference to mixed transactions or in cases where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and VAT-taxable or VAT-exempt sales — such that input taxes which cannot be directly and entirely attributed to specific transactions shall be allocated based on the sales volume of each transaction.
>
> The word *attribute* means to explain something by indicating a cause. Thus, when the law states that the input VAT must be *attributable* to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be incurred on a purchase or importation which causes or relates to the zero-rated or effectively zero-rated sales but not necessarily a part of the finished goods subject of such sales.
>
> Based on this parameter, the input taxes of taxpayers engaged purely in either zero-rated or effectively zero-rated transactions are presumably attributable to the zero-rated or effectively zero-rated activity as they are not engaged in any other category for VAT purposes. All its purchases of goods and services are made in relation to or caused by its zero-rated or effectively zero-rated activities. Otherwise, how else would the taxpayer utilize its purchase but for its main activity which, incidentally in this case, is a zero-rated or effectively zero-rated

[41] G.R. Nos. 255324 & 255353, April 12, 2023 [Per J. Dimaampao, Third Division].

transaction? The remaining requirement for it to claim refund or tax credit certificate for unutilized input tax are the documentary requirements and the period within which the same must be filed.

Meanwhile, taxpayers engaged in mixed transactions must first categorize its input taxes. Those which can be *directly* and *entirely* attributed to VAT-taxable transactions, VAT-exempt transaction, zero-rated transactions, and effectively zero-rated transactions shall first be applied to the respective output tax resulting from such transaction. Thereafter, residual input taxes, or input tax which "cannot be directly and entirely attributed to any one of the transactions, [x x x] shall be allocated to any one of the transactions [x x x] proportionately on the basis of the volume of sales." Simply stated, even if the input VAT cannot be *directly* and *entirely* allocated in any of these transactions, the taxpayer may still apply the input VAT proportionately based on the volume of the transactions. This is so because requirement of direct and entire attributability only applies in mixed transactions and only to the extent that input taxes can be attributed as a particular transaction.

This interpretation is further bolstered when juxtaposed with the definition of creditable input taxes under Section 110 of the Tax Code and the effective revenue regulations at the time.

....

Contrary to petitioner's submission, creditable input taxes go beyond taxes on purchases of goods that form part of the finished product of the taxpayer or those which are directly used in the chain of production. The Tax Code did not limit creditable input taxes to those incurred on purchases which ultimately find its way to taxpayer's finished products for sale. Input taxes incurred on other purchases may still be credited against output tax liability. Despite not forming part of the finished goods, Section 110 treats as creditable those input tax due from or paid in the course of their trade or business on the importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. Surely, even if the purchased goods do not find their way into the taxpayer's finished product, the input tax incurred therefrom can still be credited against the output tax if it is (1) incurred or paid in the course of the VAT registered taxpayer's trade or business, and (2) supported by a VAT invoice issued in accordance with the invoicing requirements of the law. *(Boldfacing supplied)*

Accordingly, petitioner's claim that respondent must establish direct attribution of input taxes solely to zero-rated sales has no legal basis.

Ninth requisite: Respondent's input taxes have not been applied against output taxes during or in the succeeding quarters.

Petitioner contends that "respondent failed to overcome the burden that the subject input tax being claimed remained unutilized or have not been applied against any output tax for the current and the succeeding quarters." It further contends that the information contained in respondent's VAT return for taxable year 2018 is still subject to petitioner's audit.

After a perusal of the records of the case, the Court *En Banc* concurs with the findings of the Court in Division:

> Since petitioner had no 12% VATable sales for the four (4) quarters of CY 2018, it had no output VAT against which the claimed input VAT of P4,600,672.57 may be applied or credited.
>
> Further, although the claimed input VAT amount of ₱4,600,672.57, which necessarily includes the valid input VAT of ₱4,176,672.53, was carried over by petitioner in the succeeding quarters, the same remained unutilized until it was deducted as "VAT Refund/TCC claimed" in its Quarterly VAT Return for the 3rd quarter of CY 2019. Accordingly, the subject claim no longer formed part of the excess input VAT of ₱654,626.11 as of the end of the 3rd quarter of CY 2019. Such being the case, the claimed input VAT could not have been carried over or utilized in the succeeding quarter of CY 2019.

Considering the foregoing, the Court *En Banc* finds no justifiable ground to overturn or modify the ruling of the Court in Division.

WHEREFORE, premises considered, the instant *Petition for Review* is **DENIED** for lack of merit.

Accordingly, the *Decision* dated January 18, 2024, and the *Resolution* dated May 2, 2024, of the Court's Special First Division in CTA Case No. 10434 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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

HENRY S. ANGELES
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