REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TRANS-ASIA RENEWABLE ENERGY CORPORATION (NOW KNOWN AS "GUIMARAS WIND CORPORATION"),
Petitioner,

CTA EB NO. 2314
(CTA Case No. 9516)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2347
(CTA Case No. 9516)

-versus-

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

TRANS-ASIA RENEWABLE ENERGY CORPORATION (NOW KNOWN AS "GUIMARAS WIND CORPORATION"),
Respondent.

Promulgated:

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* are two (2) consolidated Petitions for Review[1] filed under Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals[2] (RRCTA) by Trans-Asia Renewable Energy Corporation (now known as "Guimaras Wind Corporation") (**Trans-Asia**) and the Commissioner of Internal Revenue (**CIR**) assailing the Decision dated 3 January 2020[3] (**assailed Decision**) and the subsequent Resolutions dated 1 July 2020[4] and 23 September 2020[5] (**assailed Resolutions**), respectively, of the Court's Third Division[6] in CTA Case No. 9516, entitled *Trans-Asia Renewable Energy Corporation vs. Commissioner of Internal Revenue.*

THE PARTIES

Trans-Asia is a corporation duly organized and existing under the laws of the Philippines with office address at Barangay Suclaran, Municipality of San Lorenzo, Province of Guimaras.[7] It is registered with the Department of Energy (DOE) as an "RE Developer of Wind Energy Resources"[8] and with the Board of Investments (BOI) as a "New Renewable Energy Developer of a 54 MW San Lorenzo Wind Farm Energy Power Project"[9]. It is a registered taxpayer with the Bureau of Internal Revenue (BIR), as evidenced by its Certificate of Registration dated 01 January 1996 and Taxpayer Identification No. (TIN) 004-500-956-000.[10]

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[1] Filed by Trans-Asia Renewable Energy Corporation (Trans-Asia) on 20 August 2020, *Rollo* (CTA EB No. 2314), pp. 1-64, with annexes, and by the Commissioner of Internal Revenue (CIR) on 14 October 2020, *Rollo* (CTA EB No. 2347), pp. 1-50, with annexes.

[2] Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals.

Section 3. *Who may appeal: period to file petition.* —

...

(b) Any 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] Division Docket, Volume II, pp. 1081-1106.

[4] *Id.*, Volume III, pp. 1172-1177.

[5] *Id.*, pp. 1279-1284.

[6] Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro.

[7] Exhibits "P-1" and "P-1-a", Division Docket, Volume II, pp. 674-696.

[8] Exhibit "P-2", *id.*, p. 697.

[9] Exhibit "P-3", *id.*, pp. 698-705.

[10] Exhibit "P-6", *id.*, p. 712.

The CIR, on the other hand, is vested with authority to carry out the functions and duties of his office, including, among others, the duty to act on and approve claims for refund or issuance of a tax credit certificate (TCC), pursuant to the pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations, with office address at the BIR National Office Building, Diliman, Quezon City.

THE FACTS

The facts, as lifted from the assailed Decision and from the case records, are as follows:

Trans-Asia filed its Original and Amended Quarterly Value-Added Tax (VAT) Returns (BIR Form No. 2550-Q) for the 3rd and 4th quarters of the taxable year (TY) 2014 and the 1st and 2nd quarters of TY 2015, as follows:

Period Covered	Nature of Return Filed	Date Filed
Third (3rd) Quarter of TY 2014	Original[11]	24 October 2014
	Amended[12]	24 June 2015
Fourth (4th) Quarter of TY 2014	Original[13]	26 January 2015
	Amended[14]	16 March 2016
First (1st) Quarter of TY 2015	Original[15]	22 April 2015
	Amended[16]	16 March 2016
Second (2nd) Quarter of TY 2015	Original[17]	22 July 2015
	Amended[18]	16 March 2016

On 15 August 2016, Trans-Asia filed with the BIR Revenue District Office (RDO) No. 74 its Letter-Request,[19] Application for Tax Credits/Refunds (BIR Form No. 1914)[20] for the refund of its

[11] Exhibit "P-23", *id.*, p. 881.
[12] Exhibit "P-24", *id.*, p. 885.
[13] Exhibit "P-25", *id.*, p. 890.
[14] Exhibit "P-26", *id.*, p. 893.
[15] Exhibit "P-27", *id.*, p. 897.
[16] Exhibit "P-28", *id.*, p. 901.
[17] Exhibit "P-29", *id.*, p. 906.
[18] Exhibit "P-30", *id.*, p. 911.
[19] Exhibit "P-33", *id.*, pp. 924-932.
[20] Exhibit "P-34", *id.*, p. 933.

alleged excess and unutilized input VAT attributable to its zero-rated sales for the period 1 July 2014 to 30 June 2015 in the aggregate amount of ₱335,759,253.00, and the Sworn Certification of Mariejo P. Bautista (Bautista), Trans-Asia's SVP-Finance and Controller, stating that Trans-Asia submitted complete documents for purposes of processing its claim for refund.

Thereafter, the BIR issued Letters of Authority (LOAs) dated 21 October 2016[21] and 07 November 2016,[22] authorizing the examination of Trans-Asia's books of accounts and other accounting records for VAT for the period from 01 July 2014 to 31 December 2014 and from 1 January 2015 to 30 June 2015, respectively.

On 19 December 2016, Trans-Asia received the Letter dated 15 December 2016[23] (Denial Letter) signed by the BIR's Deputy Commissioner for Operations Group, Nestor S. Valeroso (Deputy Commissioner Valeroso), denying Trans-Asia's administrative claim for refund covering the period from 1 July 2014 to 31 December 2014 for lack of factual basis.

On 11 January 2017 and within thirty (30) days from receipt of the Denial Letter, Trans-Asia filed its prior Petition for Review before the Court in Division to appeal the denial of its administrative claim.[24] The same was raffled to the First Division and docketed as CTA Case No. 9516.[25]

On 10 February 2017, CIR filed its Motion for Extension to File Answer via registered mail. Such was received by the Court in Division on 13 February 2017.

Despite being granted an extension of time by the First Division,[26] the CIR still failed to file its answer within the extended period. Thus, the CIR was declared in default in the Resolution dated 4 April 2017.[27]

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[21] Exhibit "P-36", *id.*, p. 935; Received by Trans-Asia on 26 October 2016.
[22] Exhibit "P-37", *id.*, p. 936; Received by Trans-Asia on 10 November 2016.
[23] Exhibit "P-38", *id.*, pp. 937-938; Received by Trans-Asia on 19 November 2016.
[24] Division Docket, Volume I, pp. 10-90, with annexes.
[25] The First Division is composed of Hon. Presiding Justice Roman G. Del Rosario, as Chairperson, Hon. Associate Justice Erlinda P. Uy and Hon. Associate Justice Cielito N. Mindaro-Grulla (Ret.), as Members.
[26] See Order dated 15 February 2017, Division Docket, Volume I, p. 99.
[27] *Id.*, p. 110.

On 25 April 2017, the CIR filed an "Omnibus Motion A. To Lift Order of Default; B. To Admit Attached Answer; and C. Defer [Trans-Asia's] *Ex-Parte* Presentation of Evidence Pending Resolution of the Instant Motion",[28] with Trans-Asia's "Opposition (To the Omnibus Motion dated 21 April 2017)"[29] filed on 19 May 2017. In the Resolution dated 31 May 2017,[30] the First Division granted the CIR's Omnibus Motion, admitted his Answer and cancelled the *ex-parte* presentation of Trans-Asia's evidence.

In his Answer,[31] the CIR alleged, *inter alia*, that no zero-rated sales have been declared in Trans-Asia's VAT returns covering the period July to December 2014. As such, it cannot, therefore, claim any unutilized input taxes attributable to zero-rated sales. Furthermore, Trans-Asia did not submit copies of the official receipts (ORs) to prove the existence of zero-rated sales. Having failed to show that it has strictly complied with the conditions for the grant of a VAT refund/credit, Trans-Asia is thus not entitled to the claimed VAT refund/credit.

In the same Resolution, the Court set the case for Pre-Trial Conference on 10 August 2017.[32] Accordingly, Trans-Asia filed its Pre-Trial Brief[33] on 4 August 2017, while the CIR filed his Pre-Trial Brief[34] on 31 August 2017.

On 4 August 2017, the CIR filed an "Urgent Motion to Reset Pre-Trial Conference (Set on 10 August 2017)",[35] which the First Division granted.[36] Accordingly, the Pre-Trial Conference was reset to 7 September 2017.[37]

On 5 September 2017, the CIR forwarded to the First Division the entire BIR Records of the present case consisting of two (2) folders: Folder No. One (1) has 1,024 pages while Folder No. Two (2) has 836 pages.[38] The First Division noted the same in the Order dated 7 September 2017.[39]

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[28] *Id.*, pp. 115-121.
[29] *Id.*, pp. 132-141.
[30] *Id.*, pp. 144-145.
[31] *Id.*, pp. 122-128.
[32] *Supra* at note 29.
[33] Division Docket, Volume I, pp. 146-176.
[34] *Id.*, pp. 462-467.
[35] *Id.*, pp. 441-445.
[36] See Order dated 08 August 2017, *id.*, p. 446.
[37] *Id.*
[38] See Compliance dated 31 August 2017, *id.*, pp. 469-472.
[39] See Order dated 07 September 2017, *id.*, pp. 479-481.

During the 7 September 2017 Pre-Trial Conference, the First Division granted both parties twenty (20) days, or until 27 September 2017, within which to submit their Joint Stipulation of Facts and Issues (JSFI).[40] After being granted two (2) extensions of time by the First Division[41], the parties posted their JSFI on 23 October 2017.[42]

In compliance with the First Division's order,[43] on 7 November 2017, Trans-Asia filed a motion for the commissioning of Katherine O. Constantino (Constantino) of Constantino Guadalquiver & Co., as the Independent Certified Public Accountant (ICPA).[44] In the Order dated 16 November 2017[45], the First Division commissioned Constantino as the ICPA and directed her to submit her report within 30 days therefrom. ICPA Constantino filed her Report[46] on 18 December 2017.

On 4 December 2017, the First Division issued a Pre-Trial Order[47] approving the parties' JSFI and terminating the pre-trial.

In the trial that ensued, Trans-Asia presented its testimonial and documentary evidence. It offered the testimonies of its witnesses, namely: (1) Danilo L. Panes (Panes), Trans-Asia's Vice-President; (2) Sheila Mozenda M. Barce (Barce), Trans-Asia's Finance Manager and, (3) Constantino, the Court-commissioned ICPA.

On the witness stand, Panes identified his Judicial Affidavit[48] where he declared that:

> (1) As Vice-President, he is primarily responsible for Trans-Asia's growth in renewable energy by finding opportunities where Trans-Asia can put investments in wind energy as well as other renewable energy sources and directly responsible for overseeing the operation and management of its 54 MW San Lorenzo Wind Farm;

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[40] *Id.*
[41] See Order dated 02 October 2017 and Resolution dated 03 November 2017, *id.*, pp. 495 and 527, respectively.
[42] *Id.*, pp. 512-521.
[43] *Supra* at note 38.
[44] See Motion for Commissioning of Independent Certified Public Accountant dated 7 November 2017, Division Docket, Volume I, pp. 528-531.
[45] *Id.*, pp. 557-558.
[46] Exhibit "P-70", Separate Folder and CD.
[47] Division Docket, Volume I, pp. 567-575.
[48] Dated 03 August 2017, Exhibit "P-39", *id.*, pp. 180-234.

(2) Trans-Asia is registered with the DOE as a renewable energy developer (RE Developer) of wind energy resources, as evidenced by DOE Certificate of Registration No. WESC 2009-10-009 dated 23 October 2009;[49]

(3) Trans-Asia is registered with the BOI as a new RE Developer, as evidenced by BOI Certificate of Registration No. 2011-122 dated 15 June 2011;[50]

(4) The Energy Regulatory Commission (ERC) has certified that Trans-Asia owns and operates a wind farm located in Brgy. Suclaran, San Lorenzo, Guimaras, as evidenced by Certificate of Compliance (COC) No. 15-06-M-11V dated 01 June 2015;[51]

(5) The ERC has also certified that Trans-Asia's project is qualified to collect the Feed-In-Tariff (FIT) rate for every energy delivered to the grid, as evidenced by COC No. 15-12-M-00029V dated 01 December 2015;[52]

(6) Trans-Asia's Wind Farm achieved its commercial operations on 27 December 2014, as evidenced by DOE Certificate of Endorsement for FIT Eligibility COE-FIT No. W-2015-05-004 dated 10 June 2015;[53]

(7) Trans-Asia generated power from its wind power plant which it then exclusively sold through the Wholesale Electricity Spot Market (WESM) pursuant to its Market Participation Agreement[54] with the Philippine Electricity Market Corporation (PEMC); and,

(8) As a Direct WESM Member and Trading Participant, Trans-Asia is required to sell its electricity through the WESM.

During cross-examination, Panes confirmed that Trans-Asia sells energy purely from renewable sources.[55]

Next to take the witness stand was Barce who identified her Judicial Affidavit dated 03 August 2017[56] and declared therein that:

(1) As Finance Manager, she is primarily responsible for handling and overseeing Trans-Asia's financial and tax operations and functions;

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[49] Exhibit "P-2", *supra* at note 7.
[50] Exhibit "P-3", *supra* at note 8.
[51] Exhibit "P-4", Division Docket, Volume II, p. 706.
[52] Exhibit "P-5", *id.*, pp. 707-711.
[53] Exhibit "P-10", *id.*, p. 720.
[54] Exhibit "P-11", *id.*, pp. 721-728.
[55] TSN dated 23 January 2018.
[56] Exhibit "P-40", Division Docket, Volume I, pp. 238-440.

(2) In the latter's Amended Quarterly VAT Returns for the 3rd quarter of TY 2014 until the 2nd quarter of TY 2015, Trans-Asia reported zero-rated sales in the aggregate amount of ₱355,536,412.32;

(3) During the period of claim, Trans-Asia accumulated input taxes arising from its importation of non-capital goods and domestic purchases of goods and services;

(4) Out of the total input tax credits amounting to ₱423,981,646.46, ₱335,759,253.00 remained unutilized as of the close of the 2nd quarter of TY 2015;

(5) Trans-Asia's input VAT remained unutilized since they were not applied against any output VAT liability during and in the succeeding quarters and they were not carried forward to the succeeding taxable periods;

(6) On 15 August 2016, Trans-Asia filed its administrative claim for refund or issuance of a TCC for its excess and unutilized input VAT for the 3rd and 4th quarters of TY 2014 and the 1st and 2nd quarters of TY 2015 in the aggregate amount of ₱335,759,253.00 attributable to zero-rated sales;

(7) Thereafter, Trans-Asia received on separate dates two (2) LOAs: one authorized the examination of its books of accounts and other accounting records for the 3rd and 4th quarters of TY 2014 and the other, authorized the examination of its books of accounts and other accounting records for the 1st and 2nd quarters of TY 2015; and,

(8) On 15 December 2016, the BIR issued the Denial Letter[57], which Trans-Asia received on 19 December 2016.

No cross-examination was conducted.[58]

Lastly, when called to the witness stand, ICPA Constantino identified: (1) her Judicial Affidavit dated 5 March 2018;[59] (2) ICPA Report dated 18 December 2017;[60] and, (3) two (2) CDs[61] containing scanned copies of the ICPA Report and its annexes (marked as Exhibit "P-70-2") and the exhibits she examined (marked as Exhibit "P-70-2-1").

[57] *Supra* at note 22.
[58] TSN dated 13 February 2018.
[59] Exhibit "P-48", Division Docket, Volume I, pp. 598-615.
[60] Exhibit "P-70", *supra* at note 45.
[61] Exhibit "P-21-2".

On 2 May 2018, after completing the presentation of its testimonial evidence and after being granted an extension of time by the First Division,[62] Trans-Asia filed its Formal Offer of Evidence[63] (FOE) consisting of Exhibits "P-1" to "P-699", inclusive of sub-markings (but *sans* Exhibits "P-49" to "P-69", which were not offered in evidence). The CIR, however, failed to file his comment thereto despite notice.[64]

In the Resolution dated 30 July 2018,[65] the First Division admitted all of Trans-Asia's exhibits.

During the 7 August 2018 hearing, the CIR offered the testimony of his lone witness, Revenue Officer Jun-Jun B. Andallo (RO Andallo).

In his Judicial Affidavit dated 31 August 2017,[66] RO Andallo declared that:

(1) He holds the position of RO IV/Group Supervisor;

(2) He was tasked to review and evaluate Trans-Asia's claim for refund or issuance of a TCC for the alleged excess and unutilized input VAT for the 3rd and 4th quarters of TY 2014 in the aggregate amount of ₱335,759,253.00;

(3) His group recommended the denial of Trans-Asia's claim for refund;

(4) Based on their evaluation of Trans-Asia's claim, they found that it did not declare zero-rated sales in its Quarterly VAT Returns covering the period from July to December 2014; and,

(5) As such, Trans-Asia cannot claim any unutilized input VAT attributable to zero-rated sales.

During the cross-examination, RO Andallo was asked to clarify the period of the claim for refund to which he confirmed that it covers the 3rd and 4th quarters of TY 2014 and the 1st and 2nd quarters of TY 2015.[67] However, he likewise admitted that his group only examined Trans-Asia's documents pertaining to

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[62] See Resolution dated 30 April 2018, Division Docket, Volume I, p. 633.
[63] *Id.*, Volume II, pp. 634-673.
[64] *Per* Records Verification Report dated 07 June 2018, *id.*, p. 981.
[65] *Id.*, pp. 988-989.
[66] *Id.*, Volume I, pp. 453-457.
[67] TSN dated 7 August 2018.

the 3rd and 4th quarters of TY 2014 and not the entire period of the claim.[68]

In the interim, the case was transferred to the Court's Third Division.[69]

On 15 August 2018, the CIR filed his FOE,[70] consisting of Exhibits "R-1" to "R-4". Trans-Asia filed its Comment[71] thereto on 24 August 2018. In the Resolution dated 09 October 2018,[72] the Third Division admitted all of the CIR's exhibits and gave the parties a period of 30 days within which to submit their respective memoranda.

The CIR filed his Memorandum[73] on 13 November 2018. On the other hand, after being granted two (2) extensions of time by the Third Division,[74] Trans-Asia filed its Memorandum[75] on 3 January 2019. Accordingly, on 8 January 2019, the Third Division considered the case submitted for decision.[76]

On 3 January 2020, the Third Division rendered the assailed Decision, partially granting the Petition for Review.[77] Its dispositive portion reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner in the amount of **₱16,149,514.98**, representing the latter's unutilized excess input VAT it paid on its importations of goods for the 3rd and 4th quarters of TY 2014 and the 1st and 2nd quarters of TY 2015, attributable to its zero-rated sales for the month of June 2015.
>
> **SO ORDERED**.

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[68] *Id.*
[69] *See* Order dated 24 September 2018, Division Docket, Volume II, p. 1008. The Third Division is composed of Hon. Associate Justice Erlinda P. Uy, as Chairperson, and Hon. Associate Justice Ma. Belen M. Ringpis-Liban, as Member.
[70] *Id.*, pp. 994-998.
[71] *Id.*, pp. 999-1005.
[72] *Id.*, pp. 1010-1011.
[73] *Id.*, pp. 1012-1021.
[74] *See* Resolution dated 16 November 2018 and Resolution dated 20 December 2018, *id.*, pp. 1026 and 1031, respectively.
[75] *Id.*, pp. 1032-1072.
[76] *See* Resolution dated 8 January 2019, *id.*, p. 1074.
[77] *Supra* at note 2.

Both Trans-Asia and the CIR sought reconsideration of the assailed Decision.[78] Subsequently, on 1 July 2020[79] and 23 September 2020,[80] the Third Division rendered the assailed Resolutions on Trans-Asia's Motion for Reconsideration (MR) and the CIR's Motion for Partial Reconsideration (MPR), respectively, the dispositive portions of which are reproduced below:

> ...
>
> **WHEREFORE**, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated January 3, 2020) is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...
>
> **WHEREFORE**, premises considered, [r]espondent's Motion for Partial Reconsideration (Re: Decision promulgated on January 3, 2020) is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

Both unsatisfied with the Third Division's rulings, Trans-Asia and the CIR filed their respective Petitions for Review before the Court *En Banc*, docketed as CTA EB Nos. 2314 and 2347, respectively.[81]

In the Resolution dated 16 September 2020,[82] the Court *En Banc* ordered the CIR to file his comment to Trans-Asia's petition in CTA EB No. 2314. However, despite due notice, the CIR failed to file the same.[83]

In the Resolution dated 5 November 2020[84], the Court *En Banc* ordered Trans-Asia to file its comment to the CIR's petition in CTA EB No. 2347. In compliance therewith, Trans-Asia filed its Comment[85] on 1 December 2020.

On 23 February 2021, the Court *En Banc* submitted these consolidated cases for decision.[86]

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[78] See Motion for Reconsideration filed by Trans-Asia and Motion for Partial Reconsideration filed by the CIR, Division Docket, Volume II, pp. 1109-1128 and 1129-1142, respectively.
[79] *Supra* at note 3.
[80] *Supra* at note 4.
[81] *Supra* at note 1.
[82] *Rollo* (CTA EB No. 2314), pp. 95-96.
[83] *Per* Records Verification dated 21 January 2021, *id.*, p. 157.
[84] *Id.*, pp. 140-141.
[85] *Id.*, pp. 142-156.
[86] See Resolution dated 23 February 2021, *id.*, pp. 159-160.

THE ISSUES

The issues presented for the Court *En Banc*'s resolution are:

In CTA EB No. 2314

WHETHER TRANS-ASIA IS ENTITLED TO THE ENTIRE CLAIM FOR REFUND OF ITS ALLEGED EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) PAID OR INCURRED ON ITS IMPORTATIONS OF NON-CAPITAL GOODS FOR THE THIRD (3RD) AND FOURTH (4TH) QUARTERS OF THE TAXABLE YEAR (TY) 2014 AND FOR THE FIRST (1ST) AND SECOND (2ND) QUARTERS OF THE TAXABLE YEAR (TY) 2015 IN THE AMOUNT OF ₱335,759,253.00.[87]

In CTA EB No. 2347

WHETHER THE COURT'S THIRD DIVISION ERRED IN RULING THAT TRANS-ASIA IS ENTITLED TO A PARTIAL REFUND IN THE AMOUNT OF ₱16,149,514.98.[88]

THE PARTIES' ARGUMENTS

Trans-Asia's Arguments

In its Petition for Review in CTA EB No. 2314, Trans-Asia submits that the Third Division erred in partially denying its claim for refund or issuance of a TCC for excess and unutilized input VAT for the period of claim mainly on the ground that it failed to prove that it is a "*generation company*" authorized by the ERC to operate facilities used in the generation of electricity, as embodied in a COC, which must be secured before the actual commercial operations of the generation facility.

In claiming that it is entitled to the entire claim for refund of ₱335,759,253.00, Trans-Asia reiterates the following grounds

[87] Par. 12, Petition for Review, *Rollo* (CTA EB No. 2314), pp. 1-64, with annexes.
[88] Assignment of Error, page 31 of the Petition for Review, *Rollo* (CTA EB No. 2347), pp. 1-50, with annexes.

previously raised in its Motion for Reconsideration on the assailed Decision:

I. Section 108(B)(7)[89] of the National Internal Revenue Code (NIRC) of 1997, as amended, as well as Section 15(g)[90] of Republic Act No. (RA) 9513 or the *Renewable Energy Act of 2008* (RE Law) clearly provide that the sale of power through renewable sources of energy by VAT-registered persons shall be subject to zero percent (0%) VAT;

II. The requirements under RA 9136 or the *Electric Power Industry Reform Act of 2001* (EPIRA) must be complied with only if the claim for refund is based on the EPIRA. Since the subject claim for refund is anchored on Section 15(g) of RA 9513, in relation to Section 108(B)(7) of the NIRC of 1997, as amended, the requirement under the EPIRA (that a generation company should secure a COC before its sales of power or fuel generated from renewable energy sources can be qualified for VAT zero-rating) does not apply to Trans-Asia;

III. The COC issued by the ERC is a procedural requirement that merely confirms the status of Trans-Asia as a "generation company" and does not affect the VAT zero-rating status of Trans-Asia's sales under the NIRC of 1997, as amended, and RA 9513;

IV. Even assuming that a COC is required before a generation company's sales be accorded VAT zero-rating, Trans-Asia's application for the issuance of a COC was already deemed approved by the ERC as of 22 September 2014, and the CIR himself has recognized Trans-Asia as a generation company;

V. The Government is duty-bound to grant the refund on the equitable ground of unjust enrichment; and,

VI. The improper application of the EPIRA (in requiring all generation companies to present a COC regardless of the basis for the claim for refund) deprives generation companies of their right to the refund of unutilized input VAT, which is granted by law. Unless reversed, the assailed Decision will cause irreparable economic injury not only to Trans-Asia but to the power generation industry in general.

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[89] SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* — ...
...
(B) *Transactions Subject to Zero Percent (0%) Rate.* — ...
...
(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.

[90] **Sec. 15.** *Incentives for Renewable Energy Projects and Activities.* — ...
...
(g) *Zero Percent Value-Added Tax Rate.* — ...

Respondent CIR did not file his comment to Trans-Asia's petition.[91]

The CIR's Arguments

However, in his Petition for Review in CTA EB No. 2347, the CIR argues that the law requires that only "creditable input taxes" that are "*directly* attributable" may be refunded. Relying on the European VAT system, he argues that only the VAT paid for supplies in the business is creditable as input tax of a VAT-registered person, and thus, purchases must in turn relate to the supplies (goods/services).

The CIR adds that to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. Further, there must be a showing of the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated.

Having failed to establish direct attributability between the input tax on purchases *vis-à-vis* its zero-rated sales, the CIR insists that Trans-Asia fell short of proving the veracity of its claim for refund.

In its comment to the CIR's Petition for Review, Trans-Asia points out that the ground relied upon by the CIR is a mere reiteration of his arguments in his Motion for Reconsideration on the assailed Decision. Trans-Asia then counters that the law does not require a claimant for refund or tax credit of input tax to prove which of its purchases are directly attributable to its zero-rated transactions and which are directly attributable to its taxable transactions.

Even assuming that the law requires proof that purchases are directly attributable to its zero-rated transactions, Trans-Asia maintains that it was able to substantiate its importations of non-capital goods that are attributable to zero-rated sales of power generated through renewable sources of energy during the period of claim.

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[91] *Supra* at note 83.

THE RULING OF THE COURT *EN BANC*

Before going into the merits of the case, We shall first rule on the timeliness of the Petitions for Review filed by Trans-Asia and the CIR.

The instant Petitions for Review are timely filed.

Trans-Asia filed its Petition for Review before this Court *En Banc* on 20 August 2020 after having received the Resolution of the Court's Third Division denying its motion for reconsideration on 24 July 2020.[92]

Meanwhile, the CIR filed his Petition for Review on 14 October 2020 after having received the Resolution of the Court's Third Division denying his motion for partial reconsideration on 2 October 2020.

Having been timely filed within the reglementary periods provided under Rule 8, Section 3(b) of the RRCTA,[93] the Court *En Banc* validly acquired jurisdiction over the present Petitions.

We now proceed to determine the merits of the petitions.

At the outset, it must be underscored that the issues raised by Trans-Asia and the CIR in their respective petitions are mere reiterations of the issues which had already been considered, passed upon and resolved by the Third Division in the assailed Decision and Resolutions.

Nonetheless, We shall re-emphasize and elucidate on the conclusions reached by the Court in Division.

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[92] On 3 August 2020, the Supreme Court issued Administrative Circular 43A-2020 suspending the reglementary period for filing of petitions and appeals and other court submissions that fall between 4 to 18 August 2020, and ordering the resumption of the period for filing on 19 August 2020. Trans-Asia still had five (5) days from the resumption of the period for filing, *i.e.*, 19 August 2020 or until 23 August 2020 within which to file an appeal. Considering that 19 August 2020 is a special non-working holiday in Quezon City (birth anniversary of Former President Manuel L. Quezon), Trans-Asia timely filed its petition for review the next working day on 20 August 2020.

[93] 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.

CTA EB No. 2314

Petitioner Trans-Asia failed to establish that it is engaged in zero-rated or effectively zero-rated sales for the entire period of claim for refund or tax credit.

Petitioner Trans-Asia claims that it is entitled to the entire claim for refund in the amount of ₱335,759,253.00 representing excess and unutilized input VAT paid or incurred on its importation of non-capital goods, which are attributable to its zero-rated sales of power generated from renewable sources of energy during the period of claim. Petitioner anchored its entitlement to zero-rate on Section 15(g) of RA 9513 (RE Law), in relation to Section 108(B)(7) of the NIRC of 1997, as amended.

Section 15(g) of the RE Law pertinently reads as follows:

> SEC. 15. *Incentives for Renewable Energy Projects and Activities.* — **RE developers of renewable energy facilities**, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, **as duly certified by the DOE, in consultation with the BOI**, shall be **entitled** to the following incentives:
>
> ... ...
>
> (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 and underscoring supplied*]

To implement the RE Law, the DOE issued Department Circular No. (DC) 2009-05-0008 on 25 May 2009,[94] the relevant portion of which reads:

> **PART III**
> *Incentives for Renewable Energy Projects and Activities*
>
> **Rule 5**
> *General Incentives and Privileges for Renewable Energy Development*
>
> SEC. 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:
>
> .....
>
> 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:
>
> ... ...
>
> (b) **Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers**;
> (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.[*Emphasis and underscoring supplied*]

Relatedly, Section 108(B)(7) of the NIRC of 1997, as amended, allows VAT zero-rating on sale of power generated from renewable sources of energy, *viz.:*

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> ... ...
>
> (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.
>
> ... ...

[94]The Implementing Rules and Regulations (IRR) of RA 9513.

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

Given the foregoing, We agree with Trans-Asia's submission that the sale of renewable sources of energy may be subject to zero-rate under the RE Law and under the NIRC of 1997, as amended. Furthermore, RE Developers are entitled to zero-rated VAT on their purchases of local supply of goods, properties, and services needed for the development, construction, and installation of plant facilities.

However, the registration as RE Developer and the issuance of the corresponding DOE Certification to that effect are not enough to enjoy the incentive of VAT zero-rating on sales of renewable sources of energy under Section 15(g) of the RE Law, in relation to Section 108(B)(7) of the NIRC of 1997, as amended. Section 26[95] of the RE Law requires RE Developers to comply with the requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives under Section 15 thereof.

Additionally, RE Developers must comply with the conditions laid down under Section 18(A), (B) and (C), Rule 5, Part III of the Implementing Rules and Regulations (IRR) of the RE Law to avail of the incentives, to wit:

> SEC. 18. *Conditions for Availment of Incentives and Other Privileges.* —
>
> A. *Registration/Accreditation with the DOE*
> **For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers,** and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall register with the DOE,** through the Renewable Energy Management Bureau (REMB). The following certifications shall be issued:

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[95] SEC. 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.

... 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.** [*Emphasis and underscoring supplied]*

> (1) ***DOE Certificate of Registration*** — issued to an RE Developer holding a valid RE Service/Operating Contract.
> ...
>
> (2) ***DOE Certificate of Accreditation*** — issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.
>
> B. *Registration with the Board of Investments (BOI)*
> ...
>
> **To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers** and manufacturers, fabricators, and suppliers of locally-produced RE equipment, **shall register with the BOI**.
> ...
>
> C. *Certificate of Endorsement by the DOE*
> **RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis**.
>
> The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; *Provided*, That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR. [*Emphasis and underscoring supplied*]

The above legal pronouncements are clear and admit no exception to the requirement that to avail of the fiscal incentives including the benefit of VAT zero-rating, an RE Developer like Trans-Asia must secure the following documents, to wit:

1. DOE Certificate of Registration;
2. Registration with the BOI; and
3. Certificate of Endorsement by the DOE.

Indeed, this Court has been consistent in ruling that all three requirements are needed.[96] In *Halliburton Worldwide Limited-Philippine Branch vs. Commissioner of Internal Revenue*,[97] We held that the DOE Certificate of Registration,

[96] *Maibarara Geothermal, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 2111, Resolution, 2 June 2021.
[97] *Id.*, citing CTA EB Case No. 2022 and 2042 (CTA Case No. 9449), 29 October 2020.

Registration with the BOI, and the DOE Certificate of Endorsement of the RE Developer must all be presented to prove that the purchases of the RE Developer are VAT zero-rated pursuant to Section 15(g) of the RE Law and its IRR and, consequently, for the purchaser's claim for refund to prosper.[98]

Similarly, in *North Luzon Renewable Energy, Corp. vs. Commissioner of Internal Revenue*[99] and in *Philippine Geothermal Production Company, Inc. vs. Commissioner of Internal Revenue*,[100] it was also held that all three (3) documents must be presented, otherwise the sale could not qualify for VAT zero-rating pursuant to Section 15(g) of RA 9513 and its IRR. The use of the word "shall" in the IRR indicates mandatory submission of the requirements in order to qualify for VAT zero-rating.[101]

In this case, records reveal that Trans-Asia offered the following documentary exhibits, among others, to prove that it is a power *generation company* under the RE Law,[102] to wit:

a. Certificate of Registration No. WESC 2009-10-009 issued by the DOE on October 23, 2009 to Petitioner;

b. Certificate of Registration No. 2011-122 issued by the BOI on June 15, 2011 to Petitioner;

c. Certificate of Compliance (COC) No. 15-06-M-11V issued by the ERC to the Petitioner on **1 June 2015**;

d. Certificate of Compliance (COC) No. 15-12-M-0029V issued by the ERC to the Petitioner on **1 December 2015**;

e. Provisional Certificate of Approval to Connect NetAccess-KAP-RRA-2014-09-302 issued by National Grid Corporation of the Philippines dated September 17, 2014; and

f. Certification issued by the ERC dated August 1, 2014 granting the Company provisional authority to conduct testing and commission of units 1 to 27 between the period August 30, 2014 to January 30, 2015.

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[98] *Id.*
[99] *Id.*, citing CTA Case No. 9886, 19 February 2021.
[100] *Id.*, citing CTA Case Nos. 9208 and 9274, 24 July 2020.
[101] *Id.*
[102] CTA Case No. 9516, par. 55 of the Memorandum of the Petitioner, Division Docket, p. 1049; Formal Offer of Evidence, pp. 635-636; Resolution dated 30 July 2018, pp. 988-989.

However, there is no showing that Trans-Asia was issued a Certificate of Endorsement by the DOE on a per transaction basis, relative to its sales of renewable energy covering the period 1 July 2014 to 30 June 2015, as mandated by Section 18(C), Rule 5, Part III of the IRR of the RE Law. Hence, for failure to comply with the RE Law and its IRR, it is not entitled to VAT zero-rating and perforce, its refund claim must fail.

Nonetheless, even if Trans-Asia has failed to comply with the requirements for VAT zero-rating under the RE Law, the Court in Division correctly ruled that its sales for the month of June 2015 still qualify for VAT zero-rating under RA 9136 or the EPIRA.

While Trans-Asia insists that its claim for refund or issuance of tax credit is based on Section 15(g) of the RE Law,[103] the records show that it presented to the Court in Division a COC issued by ERC on 1 June 2015 to prove that it is a *generation company* and it is engaged in zero-rated sales of power generated from renewable sources of energy.[104]

Clearly, Trans-Asia's claim for refund is not based only on the RE Law and Section 108(B)(7) of the NIRC of 1997, as amended, but also on the EPIRA. Under the EPIRA, a *generation company* must secure a COC before its sale of power or fuel generated from renewable energy sources can qualify for VAT zero-rating.

Section 4.108-3(f) of Revenue Regulations (RR) No. 16-2005[105] provides the definition of *generation companies* and 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%[106] VAT on their gross receipts; Provided, That **sale of power or fuel generated through renewable sources of energy** such as,

[103] in relation to Section 108 (B)(7), of the NIRC of 1997, as amended.
[104] CTA Case No. 9516, Formal Offer of Evidence, pp. 635-636.
[105] 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.
[106] Now 12% under Revenue Memorandum Circular No. 7-2006.

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 4(x) of the EPIRA defines a *generation company* as follows:

SEC. 4. *Definition of Terms.* –

(x) "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

Similarly, Section 4(o) of the RE Law defines a *generation company* as follows:

SEC. 4. *Definition of Terms.* – As used in this Act, the following terms are herein defined:

xxx xxx

(o) "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

In relation to the foregoing, Section 6 of the EPIRA provides that a COC is a prerequisite before a *generation company* could 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 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]*

Moreover, Rule 5, Section 4 of the IRR of the EPIRA[107] provides:

RULE 5. GENERATION SECTOR

...

SEC. 4. *Obligations of a Generation Company.* —

(a) **A COC shall be secured from the ERC before commercial operation of a new Generation Facility.** The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. **A COC shall be issued upon compliance with such standards and requirements.**

(i) A Person owning an existing Generation Facility or a Generation Facility under construction, shall submit within ninety (90) days from effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operational history, a general company profile and other information that ERC may require. **Upon making a complete submission to the ERC, such Person shall be issued a COC by the ERC to operate such existing Generation Facility**. [*Emphasis and underscoring supplied*]

Indeed, it is only upon the issuance of the prerequisite COC that a *generation company*, like Trans-Asia, may be regarded as authorized by the ERC to operate a generation facility, and thus, entitled to VAT zero-rating of its sale of power or electricity.

Contrary to Trans-Asia's supposition, a COC is not simply confirmatory of the status of Trans-Asia as a *generation company* nor a mere procedural requirement imposed by the EPIRA and its IRR. It is a prerequisite before one can be considered as a *generation company* entitled to tax incentives.

[107] Rules and Regulations to Implement Republic Act No. 9136, entitled "Electric Power Industry Reform Act of 2001", 27 February 2002.

To reiterate, the use of the word "shall" indicates the mandatory character of the COC as a requirement in order to qualify for VAT zero-rating.

It is axiomatic that the Court, in reviewing the merits of the case shall only consider evidences which were presented before it.[108] In the present case, Trans-Asia was able to prove that it is a *generation company* armed with the requisite COC conferred by ERC on 1 June 2015.

In *Commissioner of Internal Revenue vs. Toledo Power Company,*[109] the Supreme Court ruled that Toledo Power Company was not a *generation company* until 23 June 2005, when the ERC issued a COC in its favor:

> ... [A]t the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 2002, it did not automatically become a generation company. **It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity** to CEBECO, ACMDC, and AFC **cannot qualify for VAT zero-rating under the EPIRA**. [*Emphasis and underscoring supplied]*

Accordingly, Trans-Asia's sale of power generated from renewable energy sources like wind has qualified for VAT zero-rating under the EPIRA but only starting 1 June 2015, when the ERC issued a COC in its favor. We quote with approval the pertinent ruling of the Court in Division, *viz.*:

> Given this factual milieu, Petitioner's generated sales from its power generation activities which are subject to the zero percent (0%) VAT would only refer to its sales during the period of June 1, 2015 to June 30, 2015.
>
> In its Quarterly VAT Return for the 2nd quarter of TY 2015, Petitioner reported zero-rated sales in the total amount of P148,007,419.15. Out of this amount, only **P17,119,466.49** were duly supported by zero-rated VAT official receipts during the month of June 2015, to wit: ...
>
> ... ...

[108] *Augusto vs. Dy*, G.R. No. 218731, 13 February 2019.
[109] G.R. No. 196415, 2 December 2015.

> Hence, as far as the fourth requisite is concerned, **out of the reported zero-rated sales in its Quarterly VAT Returns for the 1st and 2nd quarters of TY 2015** in the total amount of P355,536,412.32 (P207,528,993.17 + P148,007,419.15), **only the sales made during the month of June 2015 in the total amount of P17,119,466.49 qualify for VAT zero-rating**. ... [*Emphasis and underscoring supplied*]

CTA EB No. 2347

The Court's Third Division did not err in partially granting petitioner's claim for refund.

The CIR posits that only "creditable input taxes" that are "*directly* attributable" may be refunded. Relying on the European VAT system, he argues that only the VAT paid for supplies in the business is creditable as input tax of a VAT-registered person. According to the CIR, since Trans-Asia failed to establish direct attributability between the input tax on purchases *vis-à-vis* its zero-rated sales, its claim for refund must fail.

Trans-Asia counters that the ground relied upon by the CIR is a mere reiteration of his arguments in his Motion for Reconsideration on the assailed Decision, and that the law does not require a claimant for refund or tax credit of input tax to prove which of its purchases are directly attributable to its zero-rated transactions and which are directly attributable to its taxable transactions.

While this Court agrees with Trans-Asia that the CIR failed to raise any new or substantial matter in his petition, nonetheless, if only to put the CIR's mind to rest, the Court will address the matter herein raised.

Section 112(A) of the NIRC of 1997, as amended, states:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or 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 or 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:**... [*Emphasis and underscoring supplied*]

Contrary to the CIR's position, there is nothing in the afore-quoted Section 112(A) of the NIRC of 1997, as amended, which requires that the input taxes subject of a claim for refund be *directly* attributable to zero-rated sales or effectively zero-rated sales. The law merely states that the creditable input VAT should be *attributable* to zero-rated or effectively zero-rated sales. The use of the phrase "*directly* attributable" strictly relates to a situation involving taxpayers having both zero-rated or effectively zero-rated sale as well as taxable or exempt sale of goods, properties or services and the creditable input VAT cannot be *directly* attributed to any of such transactions. In such cases, the input taxes shall be allocated proportionately on the basis of the volume of sales.

Input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfy the requirement of the law.[110] It is a well-recognized rule that where the law does not distinguish, courts should not distinguish.[111]

Moreover, Philippine courts do not take judicial notice of foreign judgments and laws. They must be proven as fact under our rules on evidence.[112] This also applies to the European VAT system mentioned by the CIR.

Equally untenable is the CIR's position that to be creditable, the input tax must come from the purchases of goods that form part of the finished product of the taxpayer or the same must be directly used in the chain of production. Such position is contrary to Section 110 of the 1997 NIRC, as amended, which, in relevant part, states:

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[110] *Commissioner of Internal Revenue vs. Maersk Global Service Centres (Philippines) Ltd.*, CTA EB No. 2260, 29 July 2021.
[111] *Mandanas vs. Ochoa, Jr.*, G. R. Nos. 199802 and 208488, July 3, 2018.
[112] *Genevieve Rosal Arreza vs. Tetsushi Toyo, Local Civil Registrar of Q.C., et al.*, G.R. No. 213198, 1 July 2019.

SECTION 110. Tax Credits. –

(A) *Creditable Input Tax.* –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods;

(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

(b) Purchase of services on which a value-added tax has been actually paid.

... ...

The term *'input tax'* means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

It is plain from the above-quoted provision that input VAT evidenced by a VAT invoice or official receipt arising from any of the various transactions enumerated therein is creditable against the output VAT. These transactions are evidently not limited to purchases of goods that form part of the finished product or those that are directly used in the chain of production. They also include purchases or importation of goods for sale, for use as supplies in the course of business, and for use in trade or business for which deduction for depreciation or amortization is allowed under the 1997 NIRC, as amended.

Furthermore, the CIR's reliance on *Commissioner of Internal Revenue vs. Coral Bay Nickel Corporation*[113] is inaccurate. There is nothing in the said decision that states or implies that only those attributable to Coral Bay's zero-rated sales are allowed as valid input VAT.

From the foregoing, We find the CIR's assertions bereft of merit. Thus, the Third Division did not err in partially granting Trans-Asia's claim for refund or issuance of TCC, *viz.*:

> ***Since there are Both Zero-Rated or Effectively Zero-Rated Sales and Taxable Sales, the Said Amount of ₱335,412,034.00 Shall be Proportionately Allocated on the Basis of Sales Volume***
>
> To reiterate, the **eighth requisite** is to the effect 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 on the basis of sales volume**.
>
> In this case, for the subject periods of the claim, there exists a zero-rated or effectively zero-rated sales and taxable sales. Specifically, for the 1st quarter of TY 2015, Petitioner reported total sales in the amount of ₱207,534,322.34; while for the 2nd quarter of TY 2015, Petitioner declared its sales in the total amount of ₱148,022,800.15. In other words, Petitioner had sales for the said periods in the aggregate amount of ₱355,557,122.49.
>
> Considering that this Court finds that only the amount of ₱17,119,466.49 represents Petitioner's valid zero-rated sales vis-à-vis the aggregate sales amount of ₱355,557,122.49, the said amounts shall be used as basis for the allocation of the valid input VAT in the amount of ₱335,412,034.00, determined as follows:

Valid Zero-Rated or Effectively Zero-Rated Sales	₱17,119,466.49
Divide by Aggregate Sales for the Subject Periods	÷ 355,557,122.49
Multiply by the Valid Input VAT	x 335,412,034.00
Substantiated Input VAT attributable to Valid Zero-Rated Sales	**₱16,149,514.98**

[113] CTA EB Nos. 1735 and 1737 (CTA Case No. 8905), 18 July 2019.

> Thus, for purposes of the **eighth requisite**, the input VAT attributable to the valid zero-rated or effectively zero-rated sales is only in the amount of **₱16,149,514.98**. [*Emphasis and underscoring supplied*]

The denial of Trans-Asia's claim for refund does not constitute unjust enrichment.

Trans-Asia argues that the Government is duty-bound to grant the refund on the equitable ground of unjust enrichment.

This Court differs.

The statutory basis for unjust enrichment is found in Article 22 of the Civil Code, which provides:

> Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

Under the foregoing provision, there is unjust enrichment when (1) a person is unjustly benefited; and (2) such benefit is derived at the expense of or with damages to another.[114]

In *Car Cool Philippines, Inc. vs. Ushio Realty & Development Corporation*,[115] the Supreme Court said that there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.

There is no unjust enrichment when the person who will benefit has a valid claim to such benefit.[116] In *Team Energy Corporation vs. Commissioner of Internal Revenue*,[117] the Supreme Court made a pronouncement regarding unjust enrichment *vis-a-vis* Team Energy Corporation's claim for refund of input VAT, *viz*;

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[114] *Government Service Insurance System vs. Commission on Audit*, G.R. No. 162372 (Resolution), 11 September 2012, 694 SCRA 518-528, citing *Tamio vs. Ticson*, 485 Phil. 434, 443 (2004).
[115] G.R. No. 138088, 23 January 2006, 515 SCRA 376-386.
[116] *Id.*
[117] G.R. Nos. 197663 and 197770, 14 March 2018.

> Team Energy's contention that denial of its duly proven refund claim would constitute **unjust enrichment on the part of the government** is misplaced.
>
> **"Excess input tax is not an excessively, erroneously, or illegally collected tax." A claim for refund of this tax is in the nature of a tax exemption,** which is based on Sections 110 (B) and 112 (A) of 1997 NIRC, allowing VAT-registered persons to recover the excess input taxes they have paid in relation to their zero-rated sales. "The term 'excess' input VAT simply means that the input VAT available as [refund] credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due." Accordingly, claims for tax refund/credit of excess input tax are governed not by Section 229 but only by Section 112 of the NIRC.
>
> **A claim for input VAT refund or credit is construed strictly against the taxpayer. Accordingly, there must be strict compliance with the prescriptive periods and substantive requirements set by law before a claim for tax refund or credit may prosper.** The mere fact that Team Energy has proved its excess input VAT does not entitle it as a matter of right to a tax refund or credit. ... [*Emphasis and underscoring supplied*]

In view of the foregoing, the denial of Trans-Asia's claim for full refund of its unutilized excess input VAT does not equate to unjust enrichment.

Finally, Trans-Asia avers that the assailed Decision will cause irreparable economic injury not only to Trans-Asia but to the power generation industry in general.

This Court finds Trans-Asia's argument specious.

Injury is considered irreparable if there is no standard by which its amount can be measured with reasonable accuracy.[118] The injury must be such that its pecuniary value cannot be estimated, and thus, cannot fairly compensate for the loss.[119]

Here, Trans-Asia has not proven such a case of irreparable injury. Aside from its bare allegations that the assailed Decision will adversely affect its business and the power generation

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[118] *Social Security System vs. Bayona*, G.R. No. L-13555, May 30, 1962.
[119] *Republic vs. Regional Trial Court of Mandaluyong City-Branch 208*, CTA AC No. 177 (Civil Case No. MC05-2882), 18 September 2018.

industry as a whole, there is no showing what "irreparable economic injury" it stands to suffer with the requirement of obtaining a COC.

The Court in Division correctly ruled in this wise:

> Lastly, with regard to petitioner's argument that unless reversed, the Decision will cause irreparable economic injury not only to petitioner but to the power generation industry in general as well, is found to be baseless. As to how the requirement of securing a COC is injurious to the economy, in terms of the scale and magnitude, is not clear to this Court considering that petitioner failed to provide any support for such claim. Hence, with no empirical basis, petitioner's statement is merely an opinion which this Court cannot consider.

In fine, this Court finds no cogent reason to reverse or modify the ruling of the Third Division partially granting the Petition for Review in CTA Case No. 9516, and ordering the CIR to refund or issue a tax credit certificate in favor of Trans-Asia in the amount of **₱16,149,514.98**.

WHEREFORE, in light of the foregoing, the instant Petitions for Review are **DENIED** for lack of merit. Accordingly, the assailed Decision dated 3 January 2020 and the assailed Resolutions dated 1 July 2020 and 23 September 2020 in CTA Case No. 9516 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(I join Justice Jean Marie A. Bacorro-Villena's exhaustive and logically crafted Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With all due respect, I join Justice Jean Marie A. Bacorro-Villena's Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
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 consolidated cases were 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

TRANS-ASIA RENEWABLE ENERGY CORPORATION (NOW KNOWN AS "GUIMARAS WIND CORPORATION"),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2314
(CTA Case No. 9516)

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

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TRANS-ASIA RENEWABLE ENERGY CORPORATION (NOW KNOWN AS "GUIMARAS WIND CORPORATION"),
Respondent.

CTA EB NO. 2347
(CTA Case No. 9516)

Present:

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

Promulgated:
MAY 17 2022 10:30 a.m.

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to my esteemed colleague, Associate Justice Lanee S. Cui-David, I register my dissent to the *ponencia* as it affirms the partial grant of Trans-Asia Renewable Energy Corporation (now known as "Guimaras Wind Corporation")'s (**Trans-Asia**'s) claim for refund in the amount of ₱16,149,514.98 on the ground that Trans-Asia failed to establish that it is engaged in zero-rated sales for the entire period of the claim for refund or tax credit (*i.e.*, from 01 July 2014 to 30 June 2015).

The *ponencia* ruled that registration as a Renewable Energy (**RE**) Developer and the issuance of the corresponding Department of Energy (**DOE**) Certification to that effect are not enough to enjoy the incentive of Value-Added Tax (**VAT**) zero-rating on sales of renewable sources of energy under Section 15(g)[1] of Republic Act (**RA**) No. 9513 or the *Renewable Energy Act of 2008*, in relation to Section 108(B)(7)[2] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. Since Trans-Asia did not procure and submit a DOE Certificate of Endorsement on a *per* transaction basis, relative to its sales of renewable energy covering the period of claim, as required under Section 18(C)[3], Rule 5, Part III of the implementing rules and regulations[4] (**IRR**) of RA 9513, it is not entitled to VAT zero-rating, perforce, its refund claim under RA 9513 must fail.

Nonetheless, the *ponencia* went on to state that, even if Trans-Asia has failed to comply with the requirements for VAT zero-rating under RA

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1 **Sec. 15.** *Incentives for Renewable Energy Projects and Activities.* — ...
...
(g) *Zero Percent Value-Added Tax Rate.* — ...

2 **Sec. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* — ...
...
(B) *Transactions Subject to Zero Percent (0%) Rate.* — ...
...
(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.

3 **Sec. 18.** *Conditions for Availment of Incentives and Other Privileges.* —
...
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.** (Italics in the original text; emphasis supplied.)

4 Department of Energy (DOE) Department Circular No. DC2009-05-0008.

9513, its sales for the month of June 2015 still qualify for VAT zero-rating under RA 9136 or the *Electric Power Industry Reform Act of 2001* (**EPIRA**) as it presented to the Court in Division a Certificate of Compliance (**COC**), which was conferred by the Energy Regulatory Commission (**ERC**) on 01 June 2015[5], to prove that it is a generation company and it is engaged in zero-rated sales of power generated from renewable sources of energy. On this score, the *ponencia* held that Trans-Asia's claim for refund is not only based on RA 9513, but also on the EPIRA.

I respectfully beg to differ.

For the reasons essayed below, I submit that Trans-Asia is entitled to the refund of input VAT attributable to its zero-rated sales for the *entire* period of claim under RA 9153 and its IRR.

A DEPARTMENT OF ENERGY (DOE) CERTIFICATE OF ENDORSEMENT (COE) IS NOT REQUIRED FOR VALUE-ADDED TAX (VAT) ZERO-RATING PURPOSES.

It is undisputed that Trans-Asia is a Renewable Energy (**RE**) Developer. As shown in its Amended Articles of Incorporation (**AOI**), Trans-Asia's primary purpose is to develop and utilize renewable sources of energy and pursue new, clean and energy efficient projects.[6]

Section 4(pp) of RA 9513 defines an RE Developer as "individual/s or a group of individuals formed in accordance with existing Philippine Laws engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities."

Under Section 15(g) of the same law, RE Developers are entitled to the VAT zero-rating treatment of its sale of fuel or power generated from renewable sources of energy and its purchases of local supply of goods, properties and services related to the development, construction and installation of its power facilities. The pertinent provision of RA 9513 states:

---

5 Energy Regulatory Commission (ERC) Certificate of Compliance (COC) No. 15-06-M-11V dated 01 June 2015, Exhibit "P-4", Division Docket, Volume II, p. 706.

6 Exhibit "P-1-a", id., p. 675.

...

CHAPTER VII
GENERAL INCENTIVES

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

...

(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.[7]

...

To avail of the zero-rated VAT incentive, a taxpayer must, however, comply with the conditions laid down under Section 18 of the IRR of RA 9513, *viz*:

...

Sec. 18. ***Conditions for Availment of Incentives and Other Privileges.*** —

A. Registration/Accreditation with the DOE

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

---

7 Emphasis supplied.

> *(1)* ***DOE Certificate of Registration*** – issued to an RE Developer holding a valid RE Service/Operating Contract.
>
> ...
>
> ***B. Registration with the Board of Investments (BOI)***
>
> ...
>
> **To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers,** and manufacturers, fabricators, and suppliers of locally-produced RE equipment, **shall register with the BOI.**
>
> ...
>
> ***C. Certificate of Endorsement by the DOE***
>
> **RE Developers**, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a *per* transaction basis.**[8]
>
> ...

Relevantly, Section 108(B)(7) of the NIRC of 1997, as amended, provides, *inter alia*, that the sale of power generated through renewable sources of energy, such as wind, may be subjected to the zero percent (0%) VAT, to wit:

> ...
> **Sec. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> ...
>
> (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:
>
> ...
>
> (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.
>
> ...

Also, Section 4.108-5(b)(7) of Revenue Regulations (**RR**) No. 16-2005[9] implementing the immediately preceding provision qualifies the applicability of such zero-rating as follows:

---

[8] Italics in the original text, emphasis and underscoring supplied.

[9] *Consolidated Value-Added Tax Regulations of 2005.*

...
SEC. 4.108-5. Zero-Rated Sale of Services. –
...

(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.
...

As required under the foregoing provisions, to avail of the VAT zero-rating under RA 9513 and its IRR, an RE Developer must have secured and presented the following documents:

1. DOE Certificate of Registration;
2. BOI Certificate of Registration; and,
3. DOE Certificate of Endorsement.

However, the requirement as to the DOE Certificate of Endorsement must be read together with the Specific Terms and Conditions[10] issued by the BOI that read:

...
8. The enterprise shall be entitled to the following incentives under the administration of the BOI.
...

a) Income Tax Holiday for Seven (7) Years from November 2013 or date of commissioning, whichever is earlier.
...

The enterprise shall secure the following:

i. From the DOE-REMB, **a Certificate of Endorsement that the enterprise is in good standing for availment of the ITH**

[10] Exhibit "P-3", Division Docket, Volume II, pp. 698-705.

> incentive prior to filing of application for issuance of the certificate of ITH entitlement with the BOI; and
>
> ...
>
> b) **Duty-Free Importation of RE Machinery, Equipment and Materials** including control and communication equipment, within the first ten (10) years from the issuance of the BOI certificate of registration.
>
> The enterprise shall secure from the DOE-REMB **a Certificate of Endorsement that the enterprise is in good standing for the availment of this incentive. The Endorsement shall be on a per transaction basis. "Per transaction" means per application for incentives.**
>
> ...
>
> 9. The enterprise shall also be entitled to the following incentives under R.A. 9513 to be administered by appropriate government agencies subject to the Rules and Regulations of the respective administering government agencies.
>
> ...
>
> e) Zero-Percent Value-Added Tax Rate
>
> **The sale of power generated by the enterprise as well as its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and the whole process of exploration and development of RE sources up to its conversion into power shall be subject to zero percent value-added tax pursuant to the NIRC.**[11]
>
> ...

It is clear from the foregoing that the DOE Certificate of Endorsement is *only* required in order for Trans-Asia to enjoy the Income Tax Holiday (ITH) and the duty-free incentives. Such requirement is *not* needed for VAT zero-rating purposes. Hence, the non-presentation of the same should *not* bar Trans-Asia from applying for a refund of its excess and unutilized input VAT attributable to its zero-rated sales under RA 9513.

To my mind, **absent a categorical provision in the IRR of RA 9513 requiring the submission of a DOE Certificate of Endorsement to avail of *all* the incentives provided for in RA 9513, practical considerations dictate that such requirement should apply only when relevant to the incentive availed of by the RE Developer**. Although there is nothing in RA 9513 that prohibits the DOE from prescribing additional requirements from RE Developers to avail of the incentives pursuant to the said law, it

[11] Emphasis and underscoring supplied.

must also be considered that requiring an RE Developer, such as Trans-Asia, to submit a DOE Certificate of Endorsement on a *per* transaction basis (*i.e.*, for VAT zero-rating purposes) would be impractical and imposes an unnecessary burden upon the RE Developer.

It is also worth mentioning that the DOE has recently issued Department Circular (DC) No. DC2021-12-0042[12], which amended Section 18(C) of the IRR of RA 9513 to state that, as a rule, RE Developers are automatically qualified to avail of the incentives provided for in RA 9513 after securing a DOE Certificate of Registration, *viz*:

> ...
> Sec. 18. ***Conditions for Availment of Incentives and Other Privileges.*** —
> ...
>
> C. DOE ENDORSEMENT FOR AVAILMENT OF INCENTIVES AND DUTY-FREE IMPORTATIONS OF MACHINERY, EQUIPMENT, AND MATERIALS
>
> RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be AUTOMATICALLY qualified to avail of the incentives provided for in the Act, OTHER THAN THE INCENTIVE OF DUTY-FREE IMPORTATION OF QUALIFIED MACHINERY, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS, after securing a Certificate of Registration from the DOE.
>
> RE DEVELOPERS THAT IMPORT RE EQUIPMENT, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS SHALL SECURE A CERTIFICATE OF ENDORSEMENT FROM THE DOE, THROUGH THE REMB, ON A PER IMPORTATION BASIS.[13]
>
> ...

The foregoing amendment bolsters the position that an RE Developer is not required to submit a DOE Certificate of Endorsement to avail the VAT zero-rating incentive. There being no categorical provision in Section 18(C), as originally worded, that the submission of a DOE Certificate of Endorsement applies to *all* the incentives provided under RA 9513, the implication therefore of the

---

[12] PRESCRIBING AMENDMENTS TO SECTIONS 13(E) AND 18(C) OF DEPARTMENT CIRCULAR NO. DC2009-05-0008, ENTITLED RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9513, OTHERWISE KNOWN AS "THE RENEWABLE ENERGY ACT OF 2008".

[13] Underscoring supplied.

said amendment is not to remove such requirement but instead to clarify and confirm the lack of intention to prescribe the same.

Furthermore, based on the DOE 2021 Citizen's Charter (2nd Edition)[14], the Renewable Energy Management Bureau (REMB) of the DOE has no existing mechanism for the issuance of a Certificate of Endorsement for VAT zero-rating. The REMB only issues three (3) types of certifications, namely: (1) Endorsement to other Concerned National Government Agencies and Local Government Units; (2) Endorsement to Purchase or Transfer or Move Explosives; and, (3) Certificate of Endorsement for Duty-Free Importation Certification.[15] Given that Section 18(C) of the IRR of RA 9513 specifically states that it is the REMB which shall issue the Certificate of Endorsement and that the REMB does not issue such a certification for VAT zero-rating, Trans-Asia and all other RE Developers cannot be expected to secure the said requirement because the law does not require the impossible.[16]

TRANS-ASIA'S CLAIM FOR REFUND IS BASED ON REPUBLIC ACT (RA) NO. 9513, AND NOT ON RA 9136 OR THE EPIRA.

I likewise submit that Trans-Asia cannot be required to comply with the requirements under the EPIRA and the related provisions of RR No. 16-2005[17], particularly to secure a COC from the ERC, to be entitled to VAT zero-rating on its sale of energy generated from renewable sources because, as the records confirm, its VAT refund claim is anchored on Section 15(g) of RA 9513, in relation to Section 108(B)(7) of the NIRC of 1997, as amended, and not on the EPIRA. In fact, in its administrative claim filed with the BIR and judicial claim before this Court, Trans-Asia makes no reference to any provision of the EPIRA in invoking its entitlement to VAT zero-rating.

In the cases of *Team Energy Corporation (formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue*[18] (**Team Energy 2018**) and *Commissioner of Internal Revenue v. Team Energy Corporation (formerly Mirant Pagbilao Corporation)*[19] (**Team**

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14 <https://www.doe.gov.ph/sites/default/files/pdf/citizen_charter/2021-citizen-charter-2nd-edition.pdf> (Last accessed on 02 May 2022).
15 Id.
16 *Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, 07 December 2010.
17 Supra at note 9.
18 G.R. No. 197663, 14 March 2018.
19 G.R. No. 230412, 27 March 2019.

Energy 2019), Trans-Asia correctly pointed out that the Supreme Court has made a distinction between a claim for refund of input VAT under the EPIRA and that made under the NIRC of 1997, as amended, insofar as the EPIRA requirement of securing a COC from the ERC is concerned, *viz*:

> *Team Energy 2018*
>
> ...
>
> Indeed, the requirements of the EPIRA law would apply to claims for refund filed under the EPIRA. In such case, the taxpayer must prove that it has been duly authorized by the ERC to operate a generation facility and that it derives its sales from power generation. This was the thrust of this Court's ruling in *Commissioner of Internal Revenue v. Toledo Power Company (TPC).*
>
> In *Toledo*, the Court of Tax Appeals granted Toledo Power Company's (TPC) claim for refund of unutilized input VAT attributable to sales of electricity to NPC, but denied refund of input VAT related to sales of electricity to other entities for failure of TPC to prove that it was a generation company under the EPIRA. This Court held that TPC's failure to submit its ERC Certificate of Compliance renders its sales of generated power not qualified for VAT zero-rating. This Court, in affirming the Court of Tax Appeals, held:
>
> > Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4 (x) of the same law states that a generation company "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Corollarily, **to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation.**
> >
> > ...
> >
> > In this case, when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 2002, it did not automatically become a generation company. It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA. (Emphasis supplied)
>
> Here, considering that Team Energy's refund claim is premised on Section 108(B)(3) of the 1997 NIRC, in relation to NPC's charter, the requirements under the EPIRA are inapplicable. To qualify its electricity sale to NPC as zero-rated, Team Energy needs only to show that it is a VAT-registered entity and that it has complied with the invoicing

requirements under Section 108(B)(3) of the 1997 NIRC, in conjunction with Section 4.108-1 of Revenue Regulations No. 7-95.[20]

...

Team Energy 2019

...

Petitioner's argument against the grant of tax refund or tax credit in favor of the respondent is mainly hinged on respondent's lack of COC from the ERC. Petitioner insisted that without a COC, respondent may not be considered a generation company under the EPIRA, and therefore, its sales of generated power to the NPC may not be subject to zero percent VAT rate and enjoy the benefits under Section 108(B)(3) of the Tax Code as would entitle it to claim a tax refund or tax credit of its unutilized input VAT attributable to its sale of electricity to NPC. According to the petitioner, its assertion that COC is indispensable to a claim for refund finds support in the case decided by the CTA entitled, *Toledo Power Company v. Commissioner of Internal Revenue.*

Petitioner's contention lacks merit.

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

...

Given that respondent in this case likewise anchors its claim for tax refund or tax credit under Section 108(B)(3) of the Tax Code, it cannot be required to comply with the requirements under the EPIRA before its sale of generated power to NPC should qualify for VAT zero-rating. Section 108(B)(3) of the Tax Code in relation to Section 13 of the NPC Charter, clearly provide that sale of electricity to NPC is effectively zero-rated for VAT purposes...[21]

...

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20 Supra at note 18; Citations omitted, emphasis and italics in the original text, and underscoring supplied.

21 Supra at note 19; Citations omitted and underscoring supplied.

Based on the foregoing pronouncements, where the zero-rated VAT incentive invoked is not based on the EPIRA, the taxpayer-claimant cannot be required to comply with the requirements under the EPIRA and the related provisions of RR No. 16-2005[22], particularly to secure a COC from the ERC, to be entitled to VAT zero-rating on the sale of power or fuel generated through renewable sources of energy.

Accordingly, since the subject claim for refund of input VAT attributable to zero-rated sales is based on Section 15(g) of RA 9513, in relation to Section 108(B)(7) of the NIRC of 1997, as amended, Trans-Asia, as an RE Developer, needs only to show that it has complied with the conditions laid down under RA 9513 and its IRR[23] in order to avail of the VAT zero-rating incentive, irrespective of the requirements under the EPIRA.

Clearly, the Supreme Court's ruling in *Commissioner of Internal Revenue v. Toledo Power Company*[24] (**Toledo Power**), cited in the *ponencia*, that a taxpayer-claimaint's failure to submit its approved COC from the ERC cannot qualify its sales of generated power for VAT zero-rating under the EPIRA is *not* applicable to the present case because, in the first place, Trans-Asia's claim for refund is not based on the EPIRA. Instead, Trans-Asia's entitlement to the VAT zero-rating incentive is based principally on RA 9513 and its IRR.

Again, applying by analogy *Team Energy 2018* and *Team Energy 2019*, Trans-Asia need not submit its COC from the ERC as a condition for availing the VAT zero-rating incentive as its claim for refund is based on RA 9513 and *not* on the EPIRA.

EVEN ASSUMING ARGUENDO THAT TRANS-ASIA IS NOT ENTITLED TO VALUE-ADDED TAX (VAT) ZERO-RATING UNDER REPUBLIC ACT (RA) NO. 9513, IT IS NEVERTHELESS ENTITLED TO VAT-ZERO RATING UNDER RA 9136 OR THE EPIRA FOR THE ENTIRE PERIOD OF CLAIM.

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22 Supra at note 9.
23 Supra at note 4.
24 G.R. No. 196415, 02 December 2015.

In any event, even assuming that a taxpayer-claimant (that is both an RE Developer and a generation company) is required to prove that it is so authorized by the ERC to operate facilities used in the generation of electricity (in accordance with the EPIRA) for VAT zero-rating purposes, I also submit that Trans-Asia has nevertheless complied with such requirement as its COC application should be considered as "deemed approved" by the ERC as of 22 September 2014 even if the ERC issued its COC only on 01 June 2015.

Section 1, Article III of the Revised COC Rules provides that a duly filed COC application shall be deemed provisionally approved if the ERC does not issue a COC within the 60-calendar day period, *viz*:

> ...
>
> **ARTICLE III**
> *Requirements and Procedures*
>
> **Sec. 1.** *In General.* — All entities owning or if applicable, operating Generation Facilities shall apply for the issuance of a COC with the ERC. **Provided all the requirements shall have been complied with including the technical inspection on the facilities, the ERC shall notify the entities with Generation Facilities of its action within sixty (60) calendar days from the conduct of the said technical inspection. In the event the ERC requires the submission of additional information, or orders the postponement of final action on an application on reasonable grounds, the 60-day period shall be reckoned from the date of complete submission of the required information or the lifting of the suspension of the final action on the application.** The ERC shall deny the application should the applicant fail to submit all the information and other requirements within the period allowed, without prejudice to the re-filing of such application.
>
> **If an applicant has filed its application in accordance with the preceding paragraph but has not been issued a COC within the 60-calendar day period, its application shall be deemed provisionally approved.**[25]
>
> ...

As stated in the ERC's Certification dated 01 August 2014[26], Trans-Asia filed its application for the issuance of a COC with the ERC for its 54 MW San Lorenzo Wind Farm Energy Power Project on 24 July 2014. However, it took almost a year for the ERC to issue Trans-Asia's COC No. 15-06-M-11V, that is, on 01 June 2015.

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25 Emphasis supplied.
26 Exhibit "P-8", Division Docket, Volume II, p. 717.

Given that there is nothing on record that will show that the ERC required Trans-Asia to submit additional documents or information and that the former did not serve any written notification to postpone its final action on the latter's application, Trans-Asia must have duly filed its COC application but has not been issued a COC within the aforesaid the 60-calendar day period. As such, Trans-Asia's COC application may be deemed provisionally approved as of 22 September 2014, that is, on the 60th day from the ERC's receipt thereof.

Thus, even as Trans-Asia was able to secure a COC from the ERC in its favor, only on 01 June 2015, or *after* the commencement of its commercial operations on 27 December 2014[27], the provisional approval of its COC application as of 22 September 2014 served to cover the period prior to the COC's issuance for VAT zero-rating purposes.

TRANS-ASIA HAS ESTABLISHED THAT ITS DECLARED SALES FOR THE ENTIRE PERIOD OF CLAIM QUALIFY FOR VAT ZERO-RATING UNDER REPUBLIC ACT (RA) NO. 9513.

As to whether Trans-Asia has complied with the requirements under RA 9513 and its IRR for its sales of power or fuel generated from a renewable of energy, such as wind, to be treated as VAT zero-rated, the records confirm that Trans-Asia has done so because, as established earlier, it only needs to submit the first two (2) documentary requirements enumerated in Section 18 of the IRR of RA 9513.

First, Trans-Asia complied with the requirement to present proof of registration with the DOE, as evidenced by its DOE Certificate of Registration No. WESC 2009-10-009 dated 23 October 2009[28], certifying that it is an RE Developer of Wind Energy Resources located in the Municipality of San Lorenzo, Guimaras. The said DOE Certificate of Registration provides that Trans-Asia's registration as an RE Developer took effect on 23 October 2009.

Second, Trans-Asia satisfied the requirement to submit proof of registration with the BOI, as evidenced by its BOI Certificate of Registration

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27 Exhibit "P-10", id., p. 720.
28 Exhibit "P-2", id., p. 697.

No. 2011-122 dated 15 June 2011[29], certifying that it is a new RE Developer of a 54 MW San Lorenzo Wind Farm Energy Power Project under RA 9513.

Since Trans-Asia has complied with the all the requirements under RA 9513 and its IRR, it has indeed established that its declared sales for the entire period of claim qualify for VAT zero-rating.

However, as determined by the Court-commissioned Independent Certified Public Accountant (**ICPA**), Katherine O. Constantino (**Constantino**)[30], out of the total reported zero-rated sales for the subject period of claim amounting to ₱355,536,412.329, only the amount of ₱355,535,826.89 represents Trans-Asia's valid zero-rated sales for the same period, to wit:

Zero-Rated Sales *per* VAT Returns		
3rd Quarter of TY 2014[31]	₱-	
4th Quarter of TY 2014[32]	-	
1st Quarter of TY 2015[33]	207,528,993.17	
2nd Quarter of TY 2015[34]	148,007,419.15	
Total Zero-Rated Sales *per* VAT Returns		**₱355,536,412.32**
ICPA's Findings		
Zero-rated sales/receipts supported by official receipt (OR) where sales were reported as vatable sales	₱508.92[35]	
Zero-rated sales/receipts supported by OR where the sales was reported under the VAT portion of the OR	76.52[36]	
Less: Total Disallowances		**₱585.44**
Total Valid Zero-Rated Sales		**₱355,535,826.89**

RECOMPUTATION OF THE SUBSTANTIATED INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO THE AMOUNT OF VALID ZERO-RATED SALES.

29 Exhibit "P-3", supra at note 10.
30 See ICPA Report dated 15 December 2017, Exhibit "P-70", Separate Folder and CD.
31 Exhibit "P-24", Division Docket, Volume II, p. 885.
32 Exhibit "P-26", id., p. 893.
33 Exhibit "P-28", id., p. 901.
34 Exhibit "P-30", id., p. 911.
35 ICPA Exhibit "P-148".
36 ICPA Exhibits "P-148 and "P-165".

As stated earlier, Trans-Asia was only able to properly substantiate the amount of ₱355,535,826.89 out of its total declared zero-rated sales or receipts of ₱355,557,122.49. Thus, the input VAT attributable to its valid zero-rated sales or receipts of ₱355,535,826.89 amounts only to ₱335,391,944.96, as computed below:

Valid Zero-Rated or Effectively Zero-Rated	₱355,535,826.89
Divided by Aggregate Sales for the Period of Claim	355,557,122.49
Multiplied by the Valid Input VAT	335,412,034.00
Subtantiated Input VAT Attributable to Valid Zero-Rated Sales	**₱335,391,944.96**

It is for the reasons above that, in my opinion, Trans-Asia has sufficiently proven its entitlement to the refund or issuance of a tax credit certificate (**TCC**) in the amount of ₱335,391,944.96, representing excess and unutilized input VAT attributable to its valid zero-rated sales for the 3rd and 4th quarters of TY 2014 and the 1st and 2nd quarters of the taxable year (**TY**) 2015.

All told, I **VOTE** to **GRANT** the Petition for Review of Trans-Asia and **DENY** the Petition for Review of the Commissioner of Internal Revenue (**CIR**). Thus, the assailed Decision dated 03 January 2020 and Resolutions dated 01 July 2020 and 23 September 2020, respectively, of the Court's Third Division should be **MODIFIED TO** increase the amount refundable by the CIR to **₱335,391,944.96**, representing the substantiated excess and unutilized input VAT attributable to Trans-Asia's valid zero-rated sales for the 3rd and 4th quarters of the taxable year 2014 and the 1st and 2nd quarters of TY 2015.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice