

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE GEOTHERMAL
PRODUCTION COMPANY,
INC.,

Petitioner,

CTA EB No. 2478
(CTA Case Nos. 9208 and 9274)

Present:

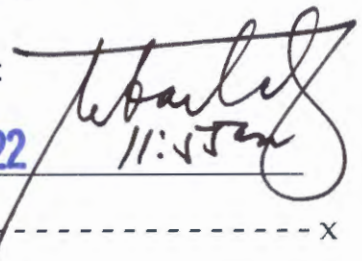
DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

-versus-

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 14 2022



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DECISION

REYES-FAJARDO, J.:

In this Petition for Review¹ dated June 15, 2021, Philippine Geothermal Production Company, Inc. seeks to reverse the Decision² dated July 24, 2020 and Resolution³ dated March 3, 2021 in CTA Case Nos. 9208 and 9274, whereby the Court in Division denied its refund claim of alleged excess and unutilized input value-added tax (VAT) attributable to zero-rated sales for the second and third quarters of taxable year (TY) 2013.

¹ Rollo, pp. 1-21.

² *Id.* at pp. 27-52.

³ *Id.* at pp. 54-58.



First, the facts.

Petitioner Philippine Geothermal Production Company, Inc. is a Securities and Exchange Commission (SEC) and VAT-registered domestic corporation duly organized and existing under Philippine laws with office address at 14th Floor, 6750 Ayala Avenue, Makati City.

Respondent Commissioner of Internal Revenue is the chief of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith. He holds office at BIR National Office Building, Diliman, Quezon City.

On June 30, 2015, petitioner filed with the Large Taxpayers Excise Audit Division of the BIR, its administrative claim for refund together with Application for Tax Credits or Refunds (BIR Form No. 1914) covering its unutilized input taxes for the *second* quarter of TY 2013 in the total amount of ₱21,273,419.41.

On September 30, 2015, petitioner filed its Application for Tax Credits or Refunds (BIR Form No. 1914) covering its unutilized input taxes for the *third* quarter of TY 2013 in the total amount of ₱9,156,798.48.

On November 5, 2015, petitioner received a letter from the BIR, denying its claim for VAT refund for the *second* quarter of TY 2015.

On November 27, 2015, petitioner filed a Petition for Review before the Court in Division, seeking for the refund of excess and unutilized input VAT attributable to zero-rated sales for the *second* quarter of TY 2013 docketed as CTA Case No. 9208.

On February 24, 2016, petitioner filed a Petition for Review before the Court in Division, seeking for the refund of excess and unutilized input VAT attributable to zero-rated sales for the *third* quarter of TY 2013 docketed as CTA Case No. 9274.

Meanwhile, on March 4, 2016, petitioner received a letter from the BIR, denying its claim for VAT refund for the *third* quarter of TY 2015.

On April 14, 2016, petitioner filed a Motion to Consolidate⁴ CTA Case No. 9208 with CTA Case No. 9274, which was granted⁵ by the Court in Division in the Hearing held on April 19, 2016.

On July 24, 2020, the Court in Division rendered the assailed Decision, disposing the case as follows:

WHEREFORE, in light of the foregoing considerations, the instant *Petitions for Review* are hereby **DENIED** for lack of merit.

SO ORDERED.

On September 4, 2020, petitioner filed a Motion for Reconsideration (Decision dated July 24, 2020).

On March 3, 2021, the Court in Division rendered the assailed Resolution, denying petitioner's motion for reconsideration in the following manner:

WHEREFORE, premises considered, Petitioner's Motion for Reconsideration (Decision dated July 24, 2020) is **DENIED** for lack of merit.

SO ORDERED.

In its Petition for Review⁶ dated June 15, 2021, petitioner raised the following grounds in support thereof:

I. It is a Renewable Energy (RE) Developer, thus entitled to the incentives of VAT Zero-Rating under the Republic Act (RA) No. 9513, otherwise known as the Renewable Energy Act of 2008.

II. It is registered with the Department of Energy (DOE) as evidenced by its Certificate of Registration, hence it is entitled to VAT zero-rating on its sales.

⁴ Docket (CTA Case No. 9274), pp. 68-72.

⁵ Minutes of Hearing dated April 19, 2016. *Id.* at p. 625.

⁶ *Rollo*, pp. 1-21.

III. RE Developers only need to present DOE Certificate of Registration to avail of VAT zero-rating on sales.

IV. It is not required to secure a DOE Certificate of Endorsement for every sale of RE to qualify for VAT zero-rating.

V. Its sales of steam generated through renewable sources of energy qualify for VAT zero-rating under Section 108(B)(7) of the National Internal Revenue Code (NIRC), as amended.

By way of Comment/Opposition⁷ dated July 19, 2021, respondent posed the following counter-arguments, to wit:

I. The Court in Division is correct in denying petitioner's petition for review for its failure to present certified true copy of its Quarterly VAT Return corresponding to the period of the claim.

II. Claims for refund are strictly construed against the taxpayer such as petitioner and in favor of the government.

THE RULING OF THE COURT

The Petition is denied.

For a refund claim of excess and unutilized input VAT to prosper, Section 112(A)⁸ of the NIRC, as amended, requires, among others that the claimant be engaged in zero-rated or effectively zero-rated sales. Petitioner based its alleged entitlement to zero-rated sales of renewable sources of energy on Section 15(g), Chapter VII of RA No. 9513, otherwise known as the "Renewable Energy Act of 2008," which provides:

CHAPTER VII

GENERAL INCENTIVES

Section 15. *Incentives for Renewable Energy Projects and Activities.* - RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly

⁷ *Id.* at pp. 62-67.

⁸ 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 ...

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.**

...⁹

Section 108(B)(7) of the NIRC, as amended, in relation to Section 15(g) of RA No. 9513 allows VAT zero-rating on sales of renewable sources of energy, 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.¹⁰

Petitioner argues that its presentation of DOE Certification GSC Nos. 2013-04-044 and 2013-04-045, certifying it as a RE Developer of Geothermal Sources proved its entitlement to VAT zero-rating on its sales of renewable energy under Section 15(g), RA No. 9513 in relation to Section 108(B)(7), NIRC, as amended.

Petitioner is in error.

⁹ Emphasis supplied.

¹⁰ Boldfacing supplied.

The registration as a RE Developer and a corresponding DOE Certification to that effect is not enough to enjoy the incentive of VAT zero-rating on sales of renewable sources of energy under Section 15(g) of RA No. 9513 in relation to Section 108(B)(7) of the NIRC, as amended. Section 26 of RA No. 9513 additionally requires RE Developers to comply with the requirements that may be imposed by government agencies tasked with the administration of the fiscal incentives under Section 15 of RA No. 9513. In turn, the DOE is the lead agency mandated to implement the provisions of RA No. 9513.¹¹ In other words, the enjoyment of incentives embodied in Section 15(g) of RA No. 9513 in relation to Section 108(B)(7) of the NIRC, as amended must be read in conjunction with Section 26 of RA No. 9513, which provides:

Section 26. Certification from the Department of Energy. -

All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy Management Bureau.

....

Provided, That the certification issued by the Department of Energy shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned.¹²

Section 33¹³ of RA No. 9513 commands the DOE to promulgate the implementing rules and regulations (IRR) of RA No. 9513. The DOE is authorized to determine the required certifications needed to enjoy the benefit of VAT zero-rating of a RE Developer's sales of renewable energy under Section 15(g) of RA No. 9513, in relation to Section 108(B)(7), NIRC, as amended. Thus, the DOE issued Department Order (DO) No. DC2009-05-0008,¹⁴ with Section 18(A), (B) and (C), Rule 5, Part III thereof prescribing the documents required to avail of VAT zero-rating on a RE Developer's sales of renewable energy, to wit:

¹¹ Section 5 of RA No. 9513 states: "Section 5. *Lead Agency.* - The DOE shall be the lead agency mandated to implement the provisions of this Act."

¹² Emphasis supplied.

¹³ Section 33. *Implementing Rules and Regulations (IRR).* - Within six (6) months from the effectivity of this Act, the DOE shall, in consultation with the Senate and House Committees on Energy, relevant government agencies and RE stakeholders, promulgate the IRR of this Act.

¹⁴ Rules and Regulations implementing Republic Act No. 9513.

Part III

Incentives for Renewable Energy Projects and Activities

Rule 5

*General Incentives and Privileges for Renewable Energy
Development*

...

SECTION 18. *Conditions for Availment of Incentives and Other Privileges.* –

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.

A. *Registration/Accreditation with the DOE*

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

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

...

(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.¹⁵

Indeed, the RE Developer's entitlement to the benefit of VAT zero-rating on its sales of renewable energy under Section 15(g) of RA No. 9513 in relation to Section 108(B)(7), NIRC, as amended rests upon its compliance with the requirements prescribed in Section 18(A), (B) and (C), Rule 5, Part III of DOE DO No. DC2009-05-0008. The word "shall" used in the portions of the DO just mentioned connotes the mandatory character thereof; it indicates a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory in nature.¹⁶ Thus, a RE Developer must register as such with the DOE, through the REMB; *and* secure a DOE Certificate of Registration as a RE Developer, BOI Registration, and DOE Certificate of Endorsement on the particular sale of RE.

In this case, petitioner failed to produce the DOE Certificate of Endorsement relative to its alleged sales of RE for the second and third quarters of TY 2013 as mandated by Section 18 (C), Rule 5, Part III of DOE DO No. DC2009-05-0008. Hence, it is not entitled to VAT zero-rating on its sales of renewable energy under Section 15(g) of RA No. 9513 in relation to Section 108(B)(7) of the NIRC, as amended.

Granting for the sake of argument that petitioner is correct in claiming that its DOE Certificate of Registration as a RE Developer is the source of its entitlement to VAT zero-rating on sales of renewable energy under Section 15(g) of RA No. 9513, in relation to Section

¹⁵ Emphasis supplied.

¹⁶ *UCPB General Insurance Company, Inc. v. Hughes Electronics Corporation*, G.R. No. 190385, November 16, 2016; *Enriquez v. Enriquez*, G.R. No. 139303, August 25, 2005; and *Bersabal v. Hon. Salvador*, G.R. No. L-35910, July 21, 1978.

108(B)(7), NIRC, as amended the subject refund claim would still be denied.

Section 11, Rule 130¹⁷ of the Rules on Evidence, as amended¹⁸ provides that the language of the writing is to be interpreted according to its legal meaning. An examination of the second paragraph of petitioner's DOE Certification GSC Nos. 2013-04-044¹⁹ and 2013-04-045²⁰ reveals that the same shall serve as the basis of petitioner's entitlement to the incentives under Section 15 of RA No. 9513 *subject to compliance with its IRR*, among others. The words "subject to" is defined as "liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for."²¹ It means that petitioner is only entitled to the incentive of VAT zero-rating on sales of renewable energy under Section 15(g) of RA No. 9513, in relation to Section 108(B)(7) of the NIRC, as amended provided it has duly complied with the requirements set forth in DOE DO No. DC2009-05-0008, the IRR of RA No. 9513.

Adverting to our earlier discussion, petitioner failed to produce the DOE Certificate of Endorsement on its alleged sales of RE covering the second and third quarters of TY 2013 as mandated by Section 18 (C), Rule 5, Part III of DOE DO No. DC2009-05-0008.

Therefore, the Court in Division is correct in denying petitioner's refund of alleged excess and unutilized input VAT attributable to zero-rated sales for the second and third quarters of TY 2013.

¹⁷ Section 11. *Interpretation of a writing according to its legal meaning.* – The language of a writing is to be interpreted according to the legal meaning it bears in the place of its execution, unless the parties intended otherwise.

¹⁸ A.M. No. 19-08-15-SC otherwise known as the "2019 Proposed Amendments to the Revised Rules on Evidence," approved on October 8, 2019.

¹⁹ This Certificate of Registration shall serve as basis of entitlement to incentives of Philippine Geothermal Company, Inc. under Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2009 (Act), **subject to the performance of its obligations under the Contract and compliance with the provisions of this Act, its Implementing Rules and Regulations (IRR) and applicable DOE directives, circulars, and other issuances which may be promulgated from time to time by the DOE in pursuance of its powers.** Boldfacing supplied. See Exhibit "P-9." Docket (CTA Case No. 9208), p. 1710.

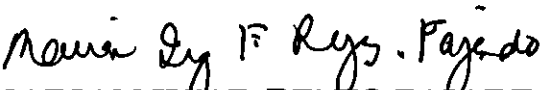
²⁰ This Certificate of Registration shall serve as basis of entitlement to incentives of Philippine Geothermal Company, Inc. under Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2009 (Act), **subject to the performance of its obligations under the Contract and compliance with the provisions of this Act, its Implementing Rules and Regulations (IRR) and applicable DOE directives, circulars, and other issuances which may be promulgated from time to time by the DOE in pursuance of its powers.** Boldfacing supplied. See Exhibit "P-6." *Id.* at p. 1672.

²¹ *Black's Law Dictionary* (Revised 4th Ed., 1968), p. 1594.

A claim for unutilized input value-added tax is in the nature of a tax exemption. Thus, strict adherence to the conditions prescribed by the law is required of the taxpayer.²² Petitioner failed in this regard.

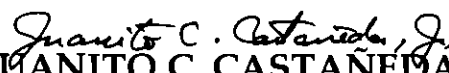
WHEREFORE, the Petition for Review dated June 15, 2021, filed by Philippine Geothermal Production Company, Inc. is **DENIED**. The Decision dated July 24, 2020 and Resolution dated March 3, 2021 rendered by the Court in Division in CTA Case Nos. 9208 and 9274 are **AFFIRMED**.

SO ORDERED.


MARIAN IV F. REYES-FAJARDO
Associate Justice

We Concur:


ROMAN G. DEL ROSARIO
Presiding Justice

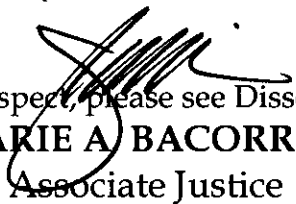

JUANITO C. CASTAÑEDA, JR.
Associate Justice

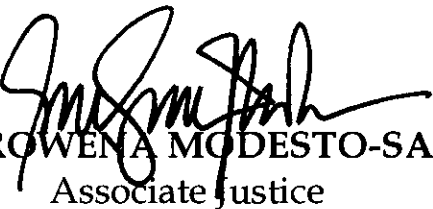

ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

²² STEAG State Power, Inc. (formerly State Power Development Corporation) vs. Commissioner of Internal Revenue, G.R. No. 205282, January 14, 2019 (Resolution on Motion for Reconsideration).


CATHERINE T. MANAHAN
Associate Justice


With due respect, please see Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE GEOTHERMAL
PRODUCTION COMPANY, INC.,
Petitioner,

CTA EB No. 2478
(CTA Case Nos. 9208 & 9274)

Present:

- versus -

DEL ROSARIO, P.L.,
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RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

JUN 14 2022

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x

DISSENTING OPINION

BACORRO-VILLENA, L.:

With all due respect to my esteemed colleague, Associate Justice Marian Ivy F. Reyes-Fajardo, I register my dissent to the *ponencia* as it affirms the denial of petitioner's claim for refund; essentially on the basis of petitioner's failure to produce a Department of Energy (DOE) Certificate of Endorsement. It is my opinion that the procurement and presentation of such document is not required in order for petitioner to apply for a refund of its excess input VAT for the reason hereinafter stated.

It is undisputed that petitioner is a Renewable Energy (RE) Developer. Under Section 15(g) of Republic Act (RA) No. 9513¹, RE Developers are entitled to the value-added tax (VAT) zero-rating treatment.

¹

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

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 No. 9513 states:

...

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.²

...

To avail of the zero-rated VAT incentive, a taxpayer must, however, comply with the conditions laid down under Section 18 of the Implementing Rules and Regulations (IRR) of RA No. 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:

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(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.**³

...

Relevantly, Section 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides 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. 16-2005⁴ implementing the immediately preceding provision qualifies the applicability of such zero-rating as follows: 

³

Italics in the original text; emphasis and underscoring supplied.

⁴

Consolidated Value-Added Tax Regulations of 2005.

DISSENTING OPINION

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...

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 No. 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 for a DOE Certificate of Endorsement must be read together with the Specific Terms and Conditions⁵ issued by the BOI that read:

...

4. The enterprise may avail of the following incentives under the administration of the BOI.

- a) **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 DOE certificate of registration.

The enterprise shall secure from the DOE-REMB a **Certificate of Endorsement that the enterprise is in good standing for availment of this incentive**. The Endorsement shall be on a **per transaction basis**. “Per transaction” means per application for incentives.

5. 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.⁶

...

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

To my mind, absent a categorical provision in the IRR of RA No. 9513 requiring the submission of a DOE Certificate of Endorsement to avail of *all* the incentives provided for in RA No. 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 No. 9513 that prohibits the DOE from prescribing additional requirements from RE Developers to avail of the incentives pursuant to the said law, it must also be considered that requiring an RE Developer, such as petitioner 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. DC2021-12-0042⁷, which amended Section 18(C) of the IRR of RA No. 9513 to state that, as a rule, RE Developers are automatically qualified to avail of the incentives provided for in RA No. 9513 after securing a DOE Certificate of Registration, *viz:* 

⁶ Emphasis in the original text, underscoring and emphasis supplied.

⁷ 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".

...
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.⁸

...

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 express 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 No. 9513, the implication therefore of the 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 Citizen's Charter of the DOE, 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.⁹ 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.¹⁰ Given that Section 18(C) of the IRR of RA No. 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, petitioner cannot be expected to secure the said requirement because the law does not appear to require the impossible.¹¹

⁸ Emphasis in the original text and underscoring supplied.

⁹ <https://www.doe.gov.ph/citizens-charter/2021-citizen-charter-remb.pdf> (Last accessed on 20 April 2022).

¹⁰ Id.

¹¹ *Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, 07 December 2010.

DISSENTING OPINION

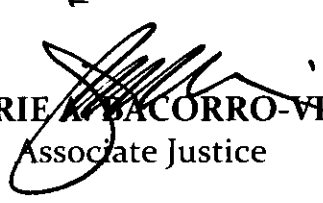
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I therefore, **VOTE** to **REMAND** the case to the Court in Division for the proper determination and calculation of petitioner's excess input VAT due petitioner.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice