



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **21 September 2020** which reads as follows:*

**“G.R. No. 252993 (Commissioner of Internal Revenue v. CBK Power Company Limited).** – The Court resolves to **GRANT** petitioner Commissioner of Internal Revenue’s (CIR) motion for extension of thirty (30) days from the expiration of the reglementary period, within which to file a petition for review on *certiorari*, **WITH WARNING THAT THE SAME SHALL BE THE LAST AND NO FURTHER EXTENSION** will be given.

After a judicious study of the case, the Court further resolves to **DENY** the instant petition<sup>1</sup> and **AFFIRM** the October 25, 2019 Decision<sup>2</sup> and the June 26, 2020 Resolution<sup>3</sup> of the Court of Tax Appeals *En Banc* (CTA *EB*) in CTA EB No. 1861 for failure of the CIR to sufficiently show that the CTA *EB* committed any reversible error in holding that respondent CBK Power Company Limited (respondent) is entitled to its claim for refund for input value-added taxes (VAT).

As correctly ruled by the CTA *EB*, the issue on whether or not respondent was actually compliant with the requirements under Republic Act No. 9513,<sup>4</sup> otherwise known as the ‘Renewable Energy Act of 2008,’ in order to avail of the fiscal incentives under Section 15 thereof is a matter that must be duly proven in the course of the trial proper through the submission of competent proof. Curiously, it is the CIR who advanced the foregoing theory as a defense to disallow respondent’s claim for refund, but presented no evidence to buttress its

<sup>1</sup> *Rollo*, pp. 10-31.

<sup>2</sup> *Id.* at 38-61. Penned by Associate Justice Juanito C. Castañeda Jr. with Presiding Justice Roman G. Del Rosario and Associate Justices Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto-San Pedro, concurring.

<sup>3</sup> *Id.* at 62-66. Penned by Associate Justice Juanito C. Castañeda Jr. with Presiding Justice Roman G. Del Rosario and Associate Justices Erlinda P. Uy, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto-San Pedro, concurring.

<sup>4</sup> Entitled “AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES,” approved on December 16, 2008.

claim. It is a basic rule in evidence that each party must prove his/her affirmative allegations,<sup>5</sup> and that mere allegation is not a proof; especially in this case, when the CIR was given ample opportunity to present evidence but intentionally omitted to do so.<sup>6</sup> As to the issue on the CTA *EB*'s findings that CBK is entitled to its claim for refund, suffice it to say that the determination of whether or not CBK's input VAT is 'directly attributable' to its zero-rated sales is a question of fact. It is settled that the CTA's findings can only be disturbed on appeal if they are not supported by substantial evidence, or there is a showing of gross error or abuse on the part of the Tax Court,<sup>7</sup> which do not obtain in this case. Hence, the instant petition must be denied.

**SO ORDERED.** (Baltazar-Padilla, J., on leave.)"

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court *Utah*  
09 OCT 2020 *10/9*

THE LAW OFFICES OF  
MAMALATEO VICTORINO GUEVARRA  
AND MAMALATEO-JUSAY (reg)  
Counsel for Petitioner  
Unit 6C 20 Lansbergh Place  
170 T. Morato Ave., Quezon City

OFFICE OF THE SOLICITOR GENERAL (reg)  
134 Amorsolo Street  
1229 Legaspi Village  
Makati City

COURT OF TAX APPEALS (reg)  
National Government Center  
Agham Road, 1104 Diliman  
Quezon City  
(CTA EB Case No. 1861) /  
(CTA Case Nos. 8246 & 8302)

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<sup>5</sup> See *Princess Talent Center Production, Inc., v. Masagca*, G.R. No. 191310, April 11, 2018.

<sup>6</sup> *Rollo*, p. 46.

<sup>7</sup> *CIR v. Manila Electric Company (MERALCO)*, 735 Phil. 547-561 (2014).