Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HEDCOR, INC., Petitioner,	**G.R. No. 250313**
- versus -	Present: LEONEN, *S.A.J.*, Chairperson, LAZARO-JAVIER,
COMMISSIONER OF INTERNAL REVENUE, Respondent.	LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.*
	Promulgated: JUL 22 2024

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DECISION

KHO, JR., *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated April 8, 2019 and the Resolution[3] dated November 15, 2019 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1761, which affirmed the CTA Second Division's Decision[4] dated August 1, 2017 in CTA Case No. 8990 denying petitioner Hedcor, Inc.'s claim for Value-Added Tax (VAT) refund for the third quarter of Calendar Year (CY) 2012.

The Facts

This case stemmed from a claim for refund of VAT filed by Hedcor,

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1 *Rollo* pp. 9–37.

2 *Id.* at 46–60. Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Cielito N. Mindaro-Grulla, and Ma. Belen M. Ringpis-Liban. Associate Justice Catherine T. Manahan dissented.

3 *Id.* at. 65–68. Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Cielito N. Mindaro-Grulla, Ma. Belen Ringpis-Liban, Catherine T. Manahan, and Jean Marie A. Bacorro-Villena. Presiding Justice Ramon G. Del Rosario was on leave and Associate Justice Maria Rowena Modesto-San Pedro took no part.

4 *Id.* at 120–138. Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Caesar A. Casanova and Catherine T. Manahan.

Inc. (Hedcor), a domestic corporation organized and existing under the laws of the Philippines, whose primary purpose is "to engage in the business of owning, developing, constructing, operating, repairing, and maintaining of hydro-electric [sic] power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partner or investors in the business of developing, operating and/or owning power generation plants and/or converting stations."[5] Hedcor is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of Republic Act No. (RA) 8424, otherwise known as the National Internal Revenue Code (NIRC), as amended, or the Tax Code.[6]

Hedcor is authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity, as evidenced by the following Certificates of Compliance:[7]

Certificate of Compliance No.	Date of Issue	Capacity/Type/Location
13-11-GN 329-20028L	November 11, 2013	8.0 MW Hydroelectric Power Plant located in Banengbeng Sablan, Benguet
13-11-GN 331-20030L	November 11, 2013	3.20 MW Hydroelectric Power Plant located in Bineng, La Trinidad, Benguet
13-11-GN 332-2003IL	November 11, 2013	2.0 MW Hydroelectric Power Plant located in Bineng, La Trinidad, Benguet
13-11-GN 333-20032L	November 11, 2013	750 kW Hydroelectric Power Plant located in Bineng, La Trinidad Benguet
13-11-GN 334-20033L	November 11, 2013	5.625 MW Hydroelectric Power Plant located in Bineng, La Trinidad, Benguet
13-11-GN 327-20026L	November 11, 2013	5.90 MW Hydroelectric Power Plant located in Poblacion, Bakun, Benguet
12-04-GN 268-19259L	April 30, 2012	3.896 MW Hydroelectric Power Plant located in Poblacion, Bakun, Benguet
13-11-GN 330-20029L	November 11, 2013	1.20 HW Hydroelectric Power Plant located in Tadiangan, Tuba, Benguet
13-11-GN 336-20035L	November 11, 2013	2.40 MW Hydroelectric Power Plant located in Ampucao, Itogon, Benguet
13-11-GN 335-20034L	November 11, 2013	2.40 MW Hydroelectric Power Plant located in Ampusongan, Bakun,

5 *Id.* at 11.
6 *Id.* at 13.
7 *Id.* at 12–13.

		Benguet
13-11-GN 328-20027L	November 11, 2013	3.60 MW Hydroelectric Power Plant located in Poblacion, Bakun, Benguet
11-04-GXT 286b-0331M	May 9, 2011	1,000 KW Hydroelectric Power Plant located in Calinan, Davao City; 600 kW Hydroelectric Power Plant located in Mintal Proper, Davao City; 650 kW Hydroelectric Power Plant located in Upper Mintal, Davao City; 300kW Hydroelectric Power Plant located in Upper Mintal, Davao City; 1920 kW Hydroelectric Power Plant located in Catalunan Pequeno, Davao City

However, Hedcor was registered as a Renewable Energy (RE) developer with the Department of Energy (DOE) only on May 27, 2016.[8]

Hedcor filed with the BIR its original and/or amended quarterly VAT returns for the third to fourth quarters of CY 2012 and for the first to fourth quarters of CY 2013 on the following dates:[9]

*Amended Returns

Quarter/Year	BIR Form No.	Date Received by the BIR
3rd Quarter 2012	2550Q	October 22, 2012
4th Quarter 2012	2550Q	January 25, 2013*
1st Quarter 2013	2550Q	February 4, 2014*
2nd Quarter 2013	2550Q	September 10, 2014*
3rd Quarter 2013	2550Q	February 4, 2014*
4th Quarter 2013	2550Q	February 4, 2014*

Under Hedcor's VAT return for the third quarter of 2012, the company paid and incurred input VAT from its domestic purchases of goods and services in the total amount of PHP 6,149,582.86. According to Hedcor, the input VAT paid on Hedcor's purchases is mainly attributable to its zero-rated sales of electricity.[10] On the other hand, around 99.32% of Hedcor's sales in the third quarter of 2012 is VAT zero-rated as follows:[11]

(A) Sales	(A) Amount of Claim	Ratio
Vatable Sales	715,675.22	0.0017

8 *Id.* at 13.
9 *Id.*
10 *Id.* at 14.
11 *Id.*

Sales to Government	2,206,138.74	0.0052
Zero Rated Sales/Recipients	424,601,057.84	0.9932
Total Sales/Receipts	**427,522,871.80**	**1.00**

Hedcor did not carry over the excess and unused input VAT to the succeeding taxable quarters as shown in the fourth quarter VAT return for CY 2012 and the first, second, third, and fourth quarters VAT returns for CY 2013.[12]

On September 26, 2014, Hedcor filed before the BIR an administrative claim for input VAT refund or issuance of Tax Credit Certificate (TCC) for unutilized input taxes in the third quarter of CY 2012, together with complete supporting documents in accordance with Revenue Memorandum Circular No. (RMC) 54-2014, the prevailing BIR regulation at the time of the filing of the administrative claim.[13]

The BIR did not act on Hedcor's administrative claim for refund within the mandatory 120-day period under Section 112(D) of the NIRC, which ended on January 24, 2015. Hedcor had 30 days from January 24, 2015, or until February 23, 2015, to file an appeal to the CTA. On February 20, 2015, well within the period to appeal, Hedcor filed a Petition for Review with the CTA, where it asserted that it had submitted complete supporting documents in accordance with RMC No. 54-2014, and it should thus be entitled to its refund claim.[14]

The CIR, in its Answer to Hedcor's Petition for Review, argued that the amount being claimed by Hedcor in its claim for refund was not properly documented. Without proper documentation showing full compliance with all the requirements for claiming unutilized input VAT, the claim for refund must fail. It is the taxpayer who has the burden of presenting clear and convincing evidence to merit a tax refund or credit, Hedcor failed to discharge this burden.[15]

The CTA Division Ruling

In a Decision[16] dated August 1, 2017, the CTA Second Division (CTA Division) denied Hedcor's claim for refund. The CTA Division agreed with Hedcor that its sales of electricity to the National Power Corporation (NPC), which were generated through hydropower, were zero-rated pursuant to

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12 *Id.*
13 *Id.* at 14–15.
14 *Id.* at 15.
15 *Id.* at 123–124.
16 *Id.* at 119–133.

Section 108(B)(7) of the NIRC.[17] However, the CTA Division stated that Hedcor's purchases of local goods, properties, and services needed for the development, construction, and installation of its plant facilities were also zero-rated in accordance with Section 15(g) of RA 9513, otherwise known as the Renewable Energy Act of 2008.[18] The CTA ruled that Hedcor need not fulfill additional requirements for the fiscal incentives under Section 15(g) of RA 9513 to apply. As such, no output VAT should have been shifted to Hedcor by its suppliers, and Hedcor should not have paid input VAT on its purchases. Citing *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[19] (*Coral Bay*), the CTA Division ruled that Hedcor's proper recourse was not against the government, but against the seller who wrongly shifted to it the output VAT.[20] Thus, the CTA Division concluded that Hedcor is not entitled to a refund.

Hedcor moved for reconsideration, but the Motion was denied in a Resolution[21] dated December 12, 2017. Unsatisfied, Hedcor appealed to the CTA *En Banc*.

The CTA *En Banc* Ruling

In a Decision[22] dated April 8, 2019, the CTA *En Banc* affirmed the CTA Division's ruling. The CTA *En Banc* reiterated that Hedcor's proper remedy is to seek reimbursement from the supplier that shifted to it the output VAT on Hedcor's purchases and affirmed the CTA Division's interpretation of Section 15(g) of RA 9513. The CTA *En Banc* further opined that while Section 112 (A) of the NIRC provides for refund of excess and unutilized input VAT, the said section pertains to the issuance of a TCC or refund of a taxpayer's creditable input tax due or paid that is attributable to zero rated ***sales,*** not purchases.[23]

Moreover, the CTA *En Banc* asserted that the principle of *solutio indebiti* does not apply in this case, as *solutio indebiti* applies where a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment which was made through mistake.[24] In this case, Hedcor is not the payor; its supplier is the payor who is liable for the VAT on Hedcor's purchases.[25]

Finally, the CTA *En Banc* denied Hedcor's prayer for a new trial as the documents Hedcor wanted to present do not qualify as newly discovered

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17 *Id.* at 128–131.
18 *Id.* at 132–134.
19 787 Phil. 57 (2016) [Per C.J. Bersamin, First Division]
20 *Rollo* pp. 135–136.
21 *Id.* at 139–151.
22 *Id.* at 46–60.
23 *Id.* at 56.
24 *Id.* at 57.
25 *Id.* at 58.

evidence, considering that Hedcor admitted that such documents were all in its possession at the time of the presentation of evidence in the CTA Division.[26]

Aggrieved, Hedcor moved for reconsideration, but the Motion was denied in a Resolution[27] dated November 15, 2019. Hence, this Petition.

The Issue Before the Court

The issue for the Court's resolution is whether Hedcor availed of the wrong remedy when it filed an administrative and judicial claim for refund of excess input VAT under Section 112(A) of the NIRC, instead of claiming reimbursement from the supplier that shifted to Hedcor its output VAT. The underlying issue, in this regard, is whether Hedcor's purchases in the third quarter of CY 2012 are zero-rated pursuant to Section 15(g) of RA 9513.

Hedcor's Arguments

Hedcor argues that the CTA Division and the CTA *En Banc* incorrectly applied the provisions of RA 9513 despite the fact that such law was never raised during trial and that it is already clear that the requisites for VAT Refund under Section 112 (A) of the NIRC have been met.[28] Hedcor adds that even assuming *arguendo* that the provisions of RA 9513 are applicable, the CTA's interpretation of its provisions make the tax incentives provided therein ineffectual by barring Hedcor and other RE developers from seeking refund of their excess input VAT, which is the output VAT of their suppliers passed on to them.[29] Hedcor cites Associate Justice Catherine Manahan's dissenting opinion[30] to the CTA *En Banc*'s Decision, *viz.*:

> To require petitioner to seek refund from its suppliers instead of the government who possibly received such payments is tantamount to imposing new conditions or norms for claims for refund under Section 112 of the 1997 NIRC, instead of merely interpreting its provisions as ascribed to us as a Court of law.[31]

Hedcor further argues that the provisions of RA 9513 are not self-executing, and that no BIR circular had yet been issued on the tax period involved implementing the said law.[32] In relation thereto, Rule 5, Section 13(G) of the Rules and Regulations Implementing RA 9513[33] expressly states

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26 *Id.*
27 *Id.* at. 65–68.
28 *Id.* at 20.
29 *Id.* at 22.
30 *Id.* at 61–64.
31 *Id.* at 62–63.
32 *Id.* at 25.
33 DOE Circular No. DC2009–05–0008 dated May 25, 2009.

that the BIR must issue guidelines to implement the provision on VAT zero-rating of RE developers.[34] In any case, according to Hedcor, Section 15(g) of RA 9513 must be construed in harmony with Section 112(A) of the NIRC. Hedcor argues that it has clear basis under Section 112(A) of the NIRC for a refund.[35]

In addition, Hedcor contends that *Coral Bay*, the case relied upon by the CTA, is not in all fours in this case, considering that: *First*, this case was decided in connection with RA 7916, otherwise known as the Philippine Economic Zone Authority Law (PEZA Law), in conjunction with its BIR guidelines on the mechanism of availing VAT zero-rating, and not RA 9513. *Second*, *Coral Bay* involved a domestic corporation registered with PEZA, not an RE developer. *Third*, *Coral Bay* hinged on the issuance of RMC 74-99, in relation to PEZA entities, whereas there is no similar regulation or issuance governing RE developers. *Finally,* the VAT-zero rating in *Coral Bay* was based on the Cross-Border Doctrine and the Destination Principle, which are inapplicable to Hedcor and this case. [36]

Furthermore, Hedcor argues that RMC 42-2003, the BIR issuance the CTA used as basis for the so-called proper remedy for Hedcor (reimbursement from its supplier), is inapplicable to this case as it was (*a*) issued five years before RA 9513 was passed and (*b*) the said RMC clarified issues raised relative to the processing of claims for VAT credit/refund filed by direct exporters.[37]

Hedcor additionally argues that *solutio indebiti* is applicable to this case as the government received the payments by mistake, and the government is not exempt from the application of *solutio indebiti*. Since the government was unjustly enriched by the erroneous payment of VAT, Hedcor is entitled to a refund.[38]

Finally, Hedcor also prayed that it should be granted a new trial to present evidence that it was not registered as an RE developer in CY 2012, as it was registered only on May 27, 2016. Thus, the CTA should not have applied RA 9513 to this case.[39]

The CIR's Arguments

In its Comment,[40] the CIR maintains that RA 9513 is applicable to this

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34 *Rollo* p. 26.
35 *Id.* at 28.
36 *Id.* at 29.
37 *Id.* at 30.
38 *Id.* at 32–33.
39 *Id.* at 34.
40 *Id.* at 202–220.

case as Section 24 of the said law states that it shall apply to all Renewable Energy capacities upon the effectivity of the Act on January 31, 2009.[41] The CIR argues that the CTA's application of the said law gave more emphasis to the text and intent of the law to classify RE developers under a distinct industry that is entitled to a separate set of incentives apart from the NIRC.[42] The CIR then pointed out that under Section 15(g) of RA 9513, all RE developers are entitled to zero-rated value-added tax on its purchases needed for the development, construction, and installation of its plant facilities.[43] This provision, the CIR adds, mandates the direct zero-rating of VAT on RE developers' purchases instead of requiring a subsequent application for a TCC or refund.[44]

In contrast, Section 112 of the NIRC mandates application for refund of creditable input tax due or paid.[45] Plainly, the CIR argues, the incentives and/or remedies under the NIRC and RA 9513 are distinct and apply to different persons or entities.[46] Particularly, the CIR posits that Section 112(A) presupposes the payment of input VAT; whereas Section 15(g) of RA 9513 removes from RE developers the burden of paying input VAT altogether.[47] Thus, since no input VAT is being paid by RE developers, it necessarily follows that they are not entitled to refund or issuance of TCC from the said purchases.[48] The CIR maintains that Hedcor's insistence that it be allowed to seek refund or issuance of TCC renders ineffective the tax incentives provided under RA 9513.[49]

Moreover, the CIR argues that the principle of *solutio indebiti* does not apply in this case. As far as Hedcor is concerned, the recipient of the input VAT paid on its purchases is the supplier who shifted or passed on the indirect taxes to Hedcor, not the CIR or the government.[50] Additionally, to substantiate a claim for unjust enrichment, the claimant "must unequivocally prove that another party knowingly received something of value which he was not entitled and that the state of affairs are such that it would be unjust for the person to keep the benefit."[51] It cannot be presumed that the CIR benefited from the erroneous payment of input VAT by Hedcor, since the latter merely "presumed" that the supplier already remitted the corresponding amount to the government.[52]

Finally, the CIR argues that Hedcor's prayer for new trial deserves scant consideration. The supposedly newly discovered evidence indubitably

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41 *Id.* at 207.
42 *Id.* at 208.
43 *Id.* at 208–209.
44 *Id.* at 209.
45 *Id.*
46 *Id.*
47 *Id.* at 210.
48 *Id.* at 211.
49 *Id.*
50 *Id.* at 215.
51 *Id.*
52 *Id.* at 216.

could have been discovered and produced during the trial. In any case, the materiality of Hedcor's DOE registration, even if admitted, is highly doubtful, since RA 9513 mandates that fiscal incentives granted under Section 15 of the said act shall apply to all RE capacities upon the effectivity of the law.[53]

Hedcor's Reply to the CIR's Arguments

Hedcor, in its Reply,[54] reiterates its compliance with all the requisites for VAT refund under Section 112 (A) of the NIRC and rebuts the CIR's interpretation of RA 9513. According to Hedcor, the use of the word "entitled" in Section 15 of RA 9513 "makes it clear that certain conditions must first be in place or certain acts must first be undertaken by RE developers before they may enjoy or avail of the incentive."[55] Hedcor then cites the CTA's ruling in another case, *Commissioner of Internal Revenue v. CBK Power Company (CBK Power)*,[56] which stated that Section 15 of RA 9513, when read in conjunction with Sections 25 and 26 of the same law, specifically requires that the taxpayer or RE developer "should, as a condition for availment of the fiscal incentives, register with the Department of Energy (DOE) and secure a certification from the Renewable Energy Management Bureau (REMB)."[57] Hedcor then argues that this interpretation of Sections 15, 25, and 26 of RA 9513 is consistent with the CTA's own interpretation in many of its decisions.[58] Thus, RA 9513 cannot be forcibly applied to Hedcor. The clear language of Section 15 of the said law does not indicate that the purchases made by RE companies are automatically subjected to zero percent VAT.[59] Hedcor argues that it is within the prerogative of the RE developer whether to avail of the incentives or not.[60]

Finally, Hedcor points out that there is nothing in the records that would suggest that it is a registered RE developer with the DOE.[61] Its certification which was not admitted as evidence, if admitted, would also show that Hedcor was not yet registered as an RE developer with the DOE at the time of the subject transactions or on the third quarter of CY 2012.[62]

The Court's Ruling

The Petition is granted.

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53 *Id.* at 217–218.
54 *Id.* at 250–273.
55 *Id.* at 257.
56 C.T.A. EB Case No. 1861, October 25, 2019.
57 *Rollo* p. 258.
58 *Id.* at 260–261, *citing*: *Philippine Geothermal Production Co., Inc. v. Commissioner of Internal Revenue,* CTA Case No. 9663, October 28, 2020; *Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9604, September 16, 2020; and *Gamesa Eolica SL–Unipersonal Philippine Branch v. Commissioner of Internal Revenue,* CTA Case No. 9668, September 2, 2020.
59 *Id.* at 261–262.
60 *Id.* at 263.
61 *Id.* at 266.
62 *Id.* at 266–267.

I.

The NIRC provides for a refund mechanism or tax credit mechanism for unutilized input VAT attributable to zero-rated and effectively zero-rated sales under Section 112(A), as follows:

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

Based on the foregoing, the Court has provided that the requisites to be entitled to a VAT refund under Section 112(A) of the NIRC are: "(*1*) the taxpayer is VAT registered; (*2*) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (*3*) the input taxes are due or paid; (*4*) the input taxes are not transitional input taxes; (*5*) the input taxes have not been applied against output taxes during and in the succeeding quarters; (*6*) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (*7*) for zero-rated sales under Section 106(A)(2)(a)(1), (2), and (B), and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (*8*) 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; and (*9*) the claim is filed within two years after the close of the taxable quarter when such sales were made."[63]

To recapitulate, the CTA denied Hedcor's claim for VAT refund, opining that the third ("the input taxes are due or paid") and sixth ("the input taxes claimed are attributable to zero-rated or effectively zero-rated sales") requisites are absent since the "input VAT" for which Hedcor seeks a refund was mistakenly paid in connection with ***purchases***, which should have been

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[63] *San Roque Power Corp. v. Commissioner of Internal Revenue*, 620 Phil. 554, 574–575 (2009) [Per J. Chico-Nazario, Third Division].

zero-rated. In other words, the CIR is arguing that Hedcor was not legally obligated to pay the VAT shifted onto it by its suppliers and, therefore, ***Hedcor should have had no input VAT for the third quarter of CY 2012.***

The plain and unambiguous language of Section 112 (A) shows that the subject of a VAT refund is ***input taxes*** due or paid attributable to zero-rated sales that were not applied against output taxes. ***If a taxpayer's purchases are zero-rated, then that taxpayer incurs 0% input taxes and, therefore, will have nothing to refund.***

The scenario contemplated in Section 112 of the NIRC is one in which the taxpayer's ***sales*** are zero-rated. When a taxpayer's sales are zero-rated, the taxpayer incurs 0% ***output VAT*** on those sales, which tends to result in excess and/or unutilized ***input VAT***. Stated differently, since VAT is an indirect tax, VAT zero-rating tends to result in a taxpayer paying an amount in excess of its actual VAT liability. VAT refunds under Section 112 of the NIRC, provides a mechanism under which taxpayers may recoup the excess VAT that they have paid, provided that such excess VAT is unutilized and all the other statutory requirements for refund have been met. All told, ***the availability of the VAT refund remedy under Section 112 of the NIRC is contingent on the existence of input VAT.***

Given the foregoing, the CTA correctly ruled that ***if*** Hedcor's purchases were zero-rated in the third quarter of CY 2012, then Hedcor filed the improper remedy.

In *Contex Corp. v. Commissioner of Internal Revenue*[64] (*Contex Corp.*), the Court held that where a taxpayer should not have been liable for the VAT erroneously passed on to it by its supplier—since the same was a zero-rated sale on the part of the said supplier, and a zero-rated purchase on the part of the taxpayer—it is the supplier, and not the taxpayer, who is the proper party to claim such VAT refund.[65]

This is further explained in *Coral Bay*—the case cited by the CTA Division and EB—where the Court held that "[w]e should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers[.]"[66]

Although the foregoing cases involved entities situated in freeports and

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64 477 Phil. 442 (2004) [Per J. Quisumbing, Second Division].

65 *Id.* at 455.

66 *Coral Bay Nickel Corp. v. Commissioner of Internal Revenue*, 787 Phil. 57, 66 (2016) [Per J. Bersamin, First Division].

ecozones, the same principle may be applied to RE developers who are similarly situated. Like entities within ecozones, the sales of suppliers to RE developers may be zero-rated sales (from the point of view of the supplier) and zero-rated purchases (from the point of view of the RE developer).

Thus, following *Contex Corp.* and *Coral Bay*, if the taxpayer with zero-rated purchases—such as RE developers or entities within ecozones—mistakenly pays input VAT on its purchases, the proper recourse of the said taxpayer is not to file an administrative or judicial claim for refund under Section 112, but to claim ***reimbursement*** from its suppliers of goods and services who mistakenly shifted output VAT.

It bears noting that it is the supplier who can book or claim the erroneously paid VAT as part of its assets or a receivable from the CIR. Thus, when a buyer-taxpayer is mistakenly charged and pays VAT on its zero-rated purchases, it is the supplier who is unjustly enriched.

II.

For the above rules on reimbursement of mistakenly shifted output VAT to apply to this case, Hedcor's purchases should have been zero-rated during the third quarter of CY 2012. If, on the other hand, Hedcor's purchases were ***not*** zero-rated, then there would be no mistake in the payment of input VAT on its purchases and, therefore, the rulings in *Contex Corp.* and in *Coral Bay* would not be applicable.

To determine whether Hedcor's purchases in the third quarter of CY 2012 were zero-rated, the underlying issue which the Court must resolve is whether the fiscal incentives under Section 15 of RA 9513 may apply to all RE developers upon the effectivity of the law.

The Court rules in the negative and, hence, finds for Hedcor, as will be explained hereunder.

Section 15 of RA 9513 is clear: to avail of the fiscal incentives enumerated under the provision, the RE developer ***must be duly certified by the DOE***. The relevant portion of Section 15 states:

> Section 15. *Incentives for Renewable Energy Projects and Activities.* — RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, ***as duly certified by the DOE***, in consultation with the BOI, shall be entitled to the following incentives:
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> . . . .
>
> (g) Zero Percent Value-Added Tax Rate. — The sale of fuel or

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

Relatedly, Section 26 of the same law emphasizes the need for a certification, to wit:

> 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.***
>
> The DOE, through the Renewable Energy Management Bureau shall issue said certification fifteen (15) days upon request of the renewable energy developer or manufacturer, fabricator or supplier: *Provided*, That the certification issued by the DOE shall be ***without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned.*** (Emphasis Supplied)

Not only does Section 26 acknowledge the requirement of a certification from the DOE, but it also allows—but does not require—concerned government agencies (such as the DOE and BIR) to impose additional requirements for the availment of the fiscal incentives under Section 15.[67] Undoubtedly, this indicates that, contrary to the CIR's assertion, the fiscal incentives under Section 15 of RA 9513 do not automatically apply to all entities who may fall under the definition of an RE developer in Section 4(pp) of the same law from the moment the law became effective. By the clear and express provisions of RA 9513, ***for an RE developer to qualify to avail of the incentives under the Act, a certification from the DOE Renewable Energy Management Bureau is required.***

Thus, the CTA Division and the CTA *En Banc* erroneously held in this

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67 *CBK Power Company v. CIR*, G.R. No. 247918, February 1, 2023 [Per J. Singh, Third Division].

case that the fiscal incentives under Section 15 of RA 9513 automatically applies to all RE developers—with no further action on their part—the moment RA 9513 became effective on January 31, 2009.

All the parties to this case admit that Hedcor failed to present any certification from the DOE during the trial before the CTA Division. Bearing in mind, therefore, that the record is bereft of any indication that Hedcor had the proper certification from the DOE during the third quarter of CY 2012, the Court is constrained to conclude that the fiscal incentives under Section 15 of RA 9513 cannot apply to Hedcor in so far as the third quarter of CY 2012. Accordingly, Hedcor's purchases for the third quarter of CY 2012 were not zero-rated, and were subject to 12% VAT.

The CTA Division and the CTA *En Banc* thus erred in holding that there were no input taxes due or paid in this case. Since Hedcor's purchase were not zero-rated, ***Hedcor was liable for and paid 12% input taxes on its purchases in the third quarter of CY 2012.*** Given the foregoing, Hedcor cannot seek reimbursement from its suppliers pursuant to *Coral Bay* and *Contex Corp.* As discussed, the remedy in *Coral Bay* and *Contex Corp.* applies only when the taxpayer has 0% input VAT on its purchases, and mistakenly paid input VAT. As Hedcor was liable for and paid 12% input taxes on its purchases in the third quarter of CY 2012, it is the remedy under Section 112 of the NIRC, and not the remedy under *Coral Bay* and *Contex Corp.*, which applies to this case.

As such, Hedcor correctly filed an administrative and judicial claim for refund of its excess input VAT attributable to its zero-rated sales in the third quarter of CY 2012, pursuant to Section 112(A) of the NIRC. Thus, the CTA Division and the CTA *En Banc* erroneously dismissed Hedcor's refund claim on the ground that it filed an improper remedy.

Having established that Hedcor filed the proper remedy, all that remains is to determine the amount of refundable or unutilized input VAT, if any. However, the determination of the refundable amount—or input VAT attributable to Hedcor's zero-rated and/or effectively zero-rated sales—would involve determination of factual issues and, thus, are evidentiary in nature. This is beyond the pale of judicial review under a Rule 45 petition where only pure questions of law, not of fact, may be resolved.[68] Accordingly, the prudent course of action is to remand CTA Case No. 8990 to the CTA Division for the determination of the amount of excess input Value-Added Tax attributable to petitioner's zero-rated and effectively zero-rated sales during the third quarter of CY 2012, in accordance with this Decision.

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[68] *Cargill Philippines, Inc. v. Commissioner of Internal Revenue,* 755 Phil. 820, 831 (2015) [Per J. Perlas-Bernabe, First Division].

ACCORDINGLY, the Petition is **GRANTED.** The Decision dated April 8, 2019 and the Resolution dated November 15, 2019 of the Court of Tax Appeals *En Banc* in CTA EB No. 1761 are hereby **REVERSED** and **SET ASIDE**. CTA Case No. 8990 is **REMANDED** to the Court of Tax Appeals Second Division for the determination of the amount of unutilized Input Value-Added Tax attributable to Hedcor, Inc.'s zero-rated and effectively zero-rated sales during the third quarter of Calendar Year 2012, and for the resolution of CTA Case No. 8990 on the merits, in accordance with this Decision, with dispatch.

SO ORDERED.

ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice