Republic of the Philippines
Supreme Court
Manila City

THIRD DIVISION

MAIBARARA GEOTHERMAL, INC., Petitioner, -versus- **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**G.R. No. 256720** Present: CAGUIOA, *J.*, *Chairperson*, INTING, GAERLAN, DIMAAMPAO, and SINGH, *JJ.* **Promulgated:** August 7, 2024

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DECISION

SINGH, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule of 45 of the Rules of Court, assailing the Decision,[2] dated November 26, 2020, and the Resolution,[3] dated June 2, 2021, of the Court of Tax Appeals (**CTA**)

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1 *Rollo*, pp. 12–61.

2 *Id.* at 86–99. Penned by Associate Justice Maria Rowena Modesto-San Pedro and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Erlinda P. Uy and Ma. Belen M. Ringpis-Liban. Associate Justice Jean Marie A. Bacorro-Villena registered a Dissenting Opinion, which was joined by Associate Justice Catherine T. Manahan.

3 *Id.* at 105–111. Penned by Associate Justice Maria Rowena Modesto-San Pedro and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy

En Banc (**EB**) in CTA EB No. 2111 (CTA Case Nos. 9119, 9201, 9254, and 9336). The CTA EB affirmed the Decision,[4] dated March 4, 2019, and the Resolution,[5] dated July 9, 2019, of the CTA Special First Division (**CTA Division**) in CTA Case Nos. 9119, 9201, 9254, and 9336, which denied Maibarara Geothermal, Inc.'s (**MGI**) claim for tax refund/credit of unutilized input value-added taxes (**VAT**) for the first, second, third, and fourth quarters of taxable year (**TY**) 2013.

The Facts

Petitioner MGI is a corporation duly organized and existing under the laws of the Philippines.[6] It is registered as a Renewable Energy (**RE**) Developer of the 20 MW Maibarara Geothermal Power Generation Project in Batangas and Laguna under Certificate of Registration No. GRESC 2011-01-025 issued by the Department of Energy (**DOE**) and Certificate of Registration No. 2011-006 issued by the Board of Investments (**BOI**).[7] MGI is also a registered VAT taxpayer with the Bureau of Internal Revenue (**BIR**) under Certificate of Registration No. OCN3RC0000483772 and Taxpayer's Identification Number (**TIN**) 007-843-328-000.[8]

MGI filed with the Revenue District Office No. 43A in Pasig City four administrative claims for the refund of its alleged unutilized input VAT attributable to zero-rated sales for the four quarters of TY 2013, thus:

Quarter	Date Filed	Amount Claimed
1st	[March 26,] 2015	[PHP] 9,027,372.28
2nd	[June 26,] 2015	[PHP] 69,816,295.84
3rd	[September 18,] 2015	[PHP] 1,621,794.52
4th	[December 10,] 2015	[PHP] 1,107,254.17
	TOTAL	[PHP] 81,572,707.81[9]

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and Ma. Belen M. Ringpis-Liban. Associate Justice Jean Marie A. Bacorro-Villena maintained her Dissenting Opinion dated November 26, 2020, and Associate Justice Catherine T. Manahan maintained her concurrence with the dissenting opinion.

4 *Id.* at 63–77. Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Cielito N. Mindaro-Grulla.

5 *Id.* at 80–84.

6 *Id.* at 87.

7 *Id.* at 18.

8 *Id.*

9 *Id.* at 87.

The Commissioner of Internal Revenue (**CIR**) failed to act on said administrative claims for refund filed by MGI. Thus, MGI filed various petitions for review before the CTA, docketed as CTA Case Nos. 9119, 9201, 9254 and 9336 on August 18, 2015, November 16, 2015, February 5, 2016, and April 25, 2016, respectively.[10]

The Ruling of the CTA Division

In its Decision,[11] dated March 4, 2019, the CTA Division denied the consolidated petitions for review for lack of merit.

The CTA Division emphasized the rule, established in jurisprudence, that a taxpayer must have been engaged in zero-rated or effectively zero-rated sales to successfully obtain a credit/refund of input VAT.[12]

The CTA Division cited this Court's ruling in *Luzon Hydro Corporation v. Commissioner of Internal Revenue*,[13] which stressed the necessity of establishing the presence of zero-rated sales on the part of the taxpayer-applicant to obtain a credit/refund of input VAT:

> The petitioner did not competently establish its claim for refund or tax credit. We agree with the CTA *En Banc* that the petitioner did not produce evidence showing that it had zero-rated sales for the four quarters of taxable year 2001. As the CTA *En Banc* precisely found, *the petitioner did not reflect any zero-rated sales from its power generation in its four quarterly VAT returns, which indicated that it had not made any sale of electricity. Had there been zero-rated sales, it would have reported them in the returns. Indeed, it carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned, or in the de novo litigation before the CTA in Division.*
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> Although the petitioner has correctly contended here that the sale of electricity by a power generation company like it should be subject to zero-rated VAT under Republic Act No. 9136, *its assertion that it need not prove its having actually made zero-rated sales of electricity by presenting the VAT official receipts and VAT returns cannot be upheld.* It ought to be reminded that it could not be permitted to substitute such vital and material documents with secondary evidence like financial statements.[14] (Emphasis supplied, citations omitted)

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10 *Id.* at 88.
11 *Id.* at 63–77.
12 *Id.* at 71–74.
13 721 Phil. 202 (2013) [Per J. Bersamin, First Division].
14 *Id.* at 213–214.

Based on the CTA Division's examination of MGI's quarterly VAT returns filed for TY 2013, MGI had no sales during said taxable period.[15] Even its Accounting Manager, Helenio B. Seraspi, in his Judicial Affidavit, admitted that MGI had no sales during TY 2013.[16] MGI's Legal Officer, Atty. Roberto K. Santos, likewise confirmed that MGI was able to sell electricity to Trans-Asia Oil and Energy Development Corporation only in February 2014.[17]

Thus, the CTA Division held that MGI had no zero-rated sales unto which the subject input VAT can be attributed for TY 2013. Having failed to comply with this basic requisite for obtaining a credit/refund of input VAT, the CTA Division held that MGI's petitions for review may not be given due course. Accordingly, the amount of PHP 81,572,707.81 claimed by MGI, supposedly representing its unutilized input VAT for TY 2013, may not be refunded.[18]

Aggrieved, MGI moved for reconsideration, which was denied by the CTA Division in its Resolution,[19] dated July 9, 2019.

After the denial of its motion for reconsideration, MGI elevated the case to the CTA *EB*.

The Ruling of the CTA En Banc

In its Decision,[20] dated November 26, 2020, the CTA *EB* denied MGI's Petition for Review and affirmed the ruling of the CTA First Division:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review filed by Maibarara Geothermal, Inc. is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision[,] dated [March 4,] 2019[,] and Resolution[,] dated [July 9,] 2019, both rendered by the Court in Division, are hereby **AFFIRMED**.
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> **SO ORDERED**.[21] (Emphasis in the original)

Before the CTA *EB*, MGI argued that there is no requirement, under Section 112(A) of the National Internal Revenue Code (**NIRC**) of 1997, as

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15 *Rollo*, pp. 73–74.
16 *Id.* at 74.
17 *Id.* at 76.
18 *Id.* at 76–77.
19 *Id.* at 80–84.
20 *Id.* at 86–99.
21 *Id.* at 98.

amended by Republic Act No. 9337,[22] that the zero-rated or effectively zero-rated sales should be made during the same period as when the input taxes sought to be refunded were incurred or paid. The CTA *EB* agreed with this contention. However, it emphasized that the presence of zero-rated sales during the period of claim regardless of the period when the claimed input VAT was incurred must nonetheless be established. It is precisely for this reason, per the CTA *EB*, that the two-year prescriptive period for filing an administrative claim for refund, under Section 112(A) of the NIRC, commences after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made and not from the time the input VAT was incurred.[23]

The CTA *EB* held that a plain reading of Section 112(A) of the NIRC shows that the existence of zero-rated sales is crucial in a claim for unutilized input VAT.[24] After all, Section 112(A) reckons the two-year prescriptive period from the close of the taxable quarter when the zero-rated sales were made, not when claimed input VAT were incurred or paid:

> SEC. 112. Refunds or Tax Credits of Input Tax. —
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> (A) Zero-rated or Effectively Zero-rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within ***two [] 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 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[.][25] (Emphasis in the original)

Citing *Nippon Express (Phils.) Corporation. v. Commissioner of Internal Revenue*,[26] the CTA *EB* stressed that when the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[27]

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22 Republic Act No. 9337 (2005), Amending the National Internal Revenue Code of 1997.
23 *Rollo*, p. 90.
24 *Id.*
25 *Id.*
26 706 Phil. 442 (2013) [Per J. Mendoza, Third Division].
27 *See id.* at 450.

The CTA *EB* observed that MGI itself, in its Petition for Review, cited the case of *San Roque Power Corporation v. Commissioner of Internal Revenue*,[28] which laid down the requirements for a claim for refund/credit under Section 112(A) to prosper, thus:

> To claim refund or tax credit under Section 112(A), *petitioner* ***must*** *comply with the following criteria*: (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)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (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***.[29] (Emphasis in the original)

The CTA *EB* noted that MGI cited the foregoing Supreme Court ruling to argue that there is no requirement that the zero-rated or effectively zero-rated sales should be made during the same period as when the input taxes sought to be refunded were incurred or paid. However, the CTA *EB* pointed out that the above ruling is also clear about the necessity of establishing the existence of zero-rated or effectively zero-rated sales during the period of claim or in any subsequent period.[30]

The CTA *EB* likewise echoed the CTA Division's citation of this Court's decision in *Luzon Hydro*, which categorically pronounced that the presence of zero-rated sales must be established by the taxpayer to obtain tax credit/refund of unutilized input VAT.[31]

The CTA *EB* upheld the CTA Division's findings, based on the latter's examination of MGI's quarterly VAT returns for TY 2013, as well as the testimonies of MGI's own witnesses that MGI had no sales declared during TY 2013.[32]

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28 620 Phil. 554 (2009) [Per J. Chico-Nazario, Third Division].

29 *Id.* at 574–575, *citing Intel Technology of the Philippines, Inc. v. Commissioner of Internal Revenue*, 550 Phil. 751, 778 (2007) [Per J. Callejo Sr., Third Division].

30 *Rollo*, p. 91.

31 *Id.*

32 *Id.* at 93.

The CTA *EB* disagreed with MGI's argument that its submission of quarterly VAT returns, income tax returns and audited financial statements from TY 2010 to 2013, Electric Supply Agreements with Trans-Asia Oil and Energy Development Corporation, and Official Receipt No. 0501, dated March 25, 2014, are sufficient to establish the existence of zero-rated sales from its operations as an RE Developer.[33]

The CTA *EB* examined MGI's Official Receipt No. 0501 and found that the pertinent details thereon, such as the payor's name, date of transaction, payor's TIN, and the nature of service performed, are illegible. The CTA *EB* found that the zero-rated sales cannot be duly substantiated on its basis.[34]

Thus, the CTA *EB* held, MGI's failure to establish the existence of zero-rated sales during the period of claim, i.e., TY 2013, or in any subsequent year, is fatal to its claim for input VAT refund.[35]

Moreover, the CTA *EB* found that MGI failed to establish that it is engaged in zero-rated sales.[36]

The CTA *EB* noted that MGI claimed that it is entitled to a VAT zero-rating treatment of its sale of fuel or power generated from renewable sources of energy and its purchases of local supply or goods, properties, and services related to the development, construction, and installation of its power facilities.[37] The CTA *EB*, however, disagreed.[38]

The CTA *EB* cited Section 15 of Republic Act No. 9513[39] or the Renewable Energy Act of 2008 and Part III, Rule 5, Section 13(G) of its Implementing Rules and Regulations[40] (**IRR**), in holding that three documents are required from an RE developer in order for it to qualify for VAT zero-rating, i.e., (1) DOE Certificate of Registration; (2) BOI Certificate of Registration; and (3) Certificate of Endorsement from the DOE.[41]

The CTA *EB* found that while MGI was issued Certificates of Registration by both the DOE and BOI, there is no showing that MGI was issued a Certificate of Endorsement by the DOE on a per transaction basis.[42]

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33 *Id.*
34 *Id.*
35 *Id.*
36 *Id.*
37 *Id.*
38 *Id.* at 94.
39 Approved on December 16, 2008.
40 DOE Department Circular No. 2009-05-0008 (2009).
41 *Rollo*, pp. 94–97.
42 *Id.* at 97.

Without this third requirement, the CTA *EB* held that MGI's alleged sales, if any, do not qualify for VAT zero-rating.

A Dissenting Opinion[43] was issued by Associate Justice Jean Marie A. Bacorro-Villena, which was concurred in by Associate Justice Catherine T. Manahan. It was their position that a DOE Certificate of Endorsement is required only for an RE Developer to enjoy the Income Tax Holiday and duty-free incentives under the BOI Specific Terms and Conditions, but not to qualify for VAT zero-rating. They are also of the view that MGI was able to establish its zero-rated sales for the first quarter of 2014. This is based on their observation that the CTA *EB*, in another VAT refund case involving MGI, granted the refund of MGI's input VAT incurred in 2012.[44]

MGI filed a motion for reconsideration of the CTA *EB* Decision, but the same was denied in a Resolution,[45] dated June 2, 2021.

The CTA *EB,* in resolving MGI's motion for reconsideration, reiterated its previous rulings in *Halliburton Worldwide Limited-Philippine Branch v. Commissioner of Internal Revenue*,[46] *North Luzon Renewable Energy Corp. v. Commissioner of Internal Revenue*,[47] and *Philippine Geothermal Production Company, Inc. v. Commissioner of Internal Revenue*[48] where it held that all three documents—the DOE Certificate of Registration, BOI Certificate of Registration, and DOE Certificate of Endorsement must all be presented to prove that the purchases of an RE Developer are VAT zero-rated, pursuant to Republic Act No. 9513 and its IRR.[49]

While the CTA *EB* agreed with MGI that Section 15 (g) of Republic Act No. 9513 merely requires a Certificate of Registration from the DOE to avail of the incentives thereunder, there is also nothing in Republic Act No. 9513 that prohibits the DOE, as the agency primarily tasked with the promulgation of its IRR, from prescribing additional requirements for RE Developers to avail of the incentives under said law. In fact, the CTA *EB* pointed out, Section 26 of Republic Act No. 9513 categorically states that the certification issued by the DOE-Renewable Energy Management Bureau (**REMB**) shall be without prejudice to any further requirements that may be

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43 *Id.* at 100–103.
44 *Id.* at 102.
45 *Id.* at 105–111.
46 CTA EB Case Nos. 2022 and 2042 (CTA Case No. 9449), October 29, 2020 (*En Banc*, Court of Tax Appeals).
47 CTA Case No. 9886, February 19, 2021 (Third Division, Court of Tax Appeals).
48 CTA Case Nos. 9208 and 9274, July 24, 2020 (Third Division, Court of Tax Appeals).
49 *Rollo*, p. 108.

imposed by the concerned agencies of the government charged with the administration of the fiscal incentives under the law.[50]

On the second issue of whether MGI established the existence of its alleged zero-rated sales, MGI contended that the CTA *EB* had previously determined in its other VAT refund case,[51] dated October 4, 2019, that it had established the existence of zero-rated sales for the first quarter of 2014.

The CTA *EB* pointed out that the courts are generally not required to take judicial notice of facts involved in another case even if tried by the same court or involving the same parties.[52] Citing *Spouses Latip v. Chua*,[53] the CTA *EB* emphasized that the power to take judicial notice must be exercised with caution and every reasonable doubt on the subject should be ample reason for the claim of judicial notice to be promptly resolved in the negative.[54]

Hence, the present Petition.

The Issues

This Court resolves the following issues:

First, whether the CTA *EB* erred in ruling that MGI failed to establish that it is engaged in zero-rated sales, based on Republic Act No. 9513 and its IRR;

Second, whether the CTA *EB* erred in affirming the ruling of the CTA Division that MGI is not entitled to claim a refund of input VAT under Section 112(A) of the NIRC.

The Ruling of the Court

The issues raised in the Petition are whether MGI is an entity engaged in zero-rated sales and whether it may claim a tax refund in the amount of PHP 81,572,707.81 for creditable input tax attributable to zero-rated or effectively zero-rated sales, pursuant to Section 112(A) of the NIRC.

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50 *Id.* at 108–109.

51 *Commissioner of Internal Revenue v. Maibarara Geothermal, Inc.*, CTA EB Case No. 1863, October 4, 2019 (*En Banc*, Court of Tax Appeals).

52 *Rollo*, p. 109.

53 619 Phil. 155 (2009) [Per J. Nachura, Third Division].

54 *Rollo*, p. 109.

To resolve the foregoing, this Court must re-examine the facts and the evidence offered by MGI in the courts below. It is an accepted doctrine that this Court is not a trier of facts. It is not its function to review, examine, and evaluate or weigh the probative value of the evidence presented.[55]

MGI argues, however, that certain exceptions to this rule exist in this case such that this Court should nonetheless review the CTA's findings of fact. Specifically, MGI argues that the CTA's ruling was tainted with grave abuse of discretion and its judgment was based on a misapprehension of facts.[56]

Thus, MGI asks this Court to make its own appreciation of the documents it submitted to establish its alleged zero-rated sales, particularly Official Receipt No. 0501, which was deemed illegible by the CTA *EB*.[57] It also reiterates its contention before the CTA *EB* that it had already established the existence of its zero-rated sales for the first quarter of 2014 in another case decided by the CTA *EB*, where refund of its input VAT incurred in TY 2012 was granted.[58] Finally, it insists that a DOE Certificate of Endorsement is not necessary to avail of the incentives under Republic Act No. 9513.

The Court disagrees with MGI. It finds no exceptions to the general rule, that this Court will not review findings of fact, obtaining in this case.

MGI alleges that the CTA *EB* committed grave abuse of discretion in issuing its Decision and that its judgment was based on a misapprehension of facts. However, the Court finds that MGI's Petition failed to support these allegations. It has neither shown that the CTA *EB* acted capriciously or whimsically in issuing its ruling, nor has it demonstrated that the CTA *EB* misapprehended the facts of the case. A party filing the petition has the burden of showing convincing evidence that the appeal falls under one of the exceptions. A mere assertion is not sufficient.[59]

MGI has complied with the statutory requirements to qualify its transactions for zero-rating

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55 *See China Banking Corp. v. Cebu Printing and Packaging Corp.*, 642 Phil. 308, 320 (2010) [Per J Peralta, Second Division]; *Quitoriano v. Department of Agrarian Reform Adjudication Board (DARAB)*, 571 Phil. 331, 341–342 (2008) [Per J. Chico-Nazario, Third Division].

56 *Rollo*, pp. 24–25.

57 *Id.* at 28.

58 *Id.* at 34.

59 *See Spouses Miano. v. Manila Electric Co.*, 800 Phil. 118, 124 (2016) [Per J. Leonen, Second Division].

The first issue is whether MGI has proven that it is engaged in zero-rated sales under Republic Act No. 9513 and its IRR, such that it qualifies for VAT zero-rating under Section 108(B)(7) and may claim a refund of input VAT under Section 112(A) of the NIRC.

Section 108(B)(7) of the NIRC reads as follows:

> Sec. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
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> . . . .
>
> (B) *Transactions Subject to [0%] Rate.* — ***The following services performed in the Philippines by VAT-registered persons shall be subject to [0%] rate***:
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> . . . .
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> (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 supplied)

If an entity is engaged in zero-rated transactions, there is no output tax that can be credited against its input tax. Thus, said entity is allowed to obtain a credit/refund of input taxes attributable to zero-rated transactions. Section 112(A) of the NIRC provides 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 [] 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*, [t]hat 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*, [t]hat 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 supplied)

As pointed out by the CTA *EB*, this Court, in the case of *San Roque*, has broken down the foregoing provision and specified the requirements for a claim for refund/tax credit[60] thereunder to prosper:

> *To claim refund or tax credit under Section 112(A), petitioner must comply with the following criteria*: (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)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (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*.[61] (Emphasis supplied)

In question in the present case is whether MGI complied with the second and ninth requirements. The presence of zero-rated or effectively zero-rated sales is critical for the fulfillment of the ninth requirement, as it is from the close of the taxable quarter when such sales were made that the two-year prescriptive period is reckoned.

As to the second requirement, MGI argues that a Certificate of Endorsement from the DOE is not indispensable for an RE Developer to avail of the incentive of VAT zero-rating under Republic Act No. 9513.[62] MGI contends that Section 15(g) of said law only requires that the taxpayer be certified as an RE Developer by the DOE, and it has complied with this requirement, as evidenced by its Certificate of Registration No. GRESC 2011-01-025.[63] Moreover, a Certificate of Endorsement from the DOE is only required to avail of the incentives under Section 15(b) of Republic Act No. 9513, i.e., duty free importation of RE machinery, equipment, and materials and the sale, transfer, or disposition of such imported capital machinery, equipment, and materials.[64]

Section 15(b) of Republic Act No. 9513 reads as follows:

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60 *Rollo*, p. 90.

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

62 *Rollo*, pp. 29–30.

63 *Id.* at 31.

64 *Id.* at 34–35.

> 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**:
>
> [. . . .]
>
> (b) *Duty-free Importation of RE Machinery, Equipment and Materials* – Within the first ten [] years upon the issuance of a certification of an RE developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties: Provided, however, [t]hat the said machinery, equipment, materials[,] and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: **Provided, further, [t]hat endorsement of the DOE is obtained before the importation of such machinery, equipment, materials[,] and parts are made.**
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> **Endorsement of the DOE must be secured before any sale, transfer[,] or disposition of the imported capital equipment, machinery[,] or spare parts is made**: Provided, [t]hat if such sale, transfer[,] or disposition is made within the ten []-year period from the date of importation, any of the following conditions must be present[.][65] (Emphasis in original)

However, the CTA *EB* ruled that a DOE Certificate of Endorsement is also required to avail of the zero-rated VAT incentive, under Part III, Rule 5, Section 13(G), in relation to Section 18(A), (B) and (C), of Republic Act No. 9513's 2009 IRR:[66]

> PART III
> Incentives for Renewable Energy Projects and Activities
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> . . . .
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> Rule 5
>
> General Incentives and Privileges for Renewable Energy Development
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> . . . .
>
> SECTION 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:

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65 *Id.*

66 *Id.* at 93–95.

. . . .

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**; and

(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.

The DOE, BIR[,] and DOF shall, within six [] months from issuance of this IRR, formulate the necessary mechanisms/guidelines to implement this provision.[67] (Emphasis in original)

To avail of the zero-rated VAT incentive under the above provision, the CTA *EB* held that MGI should have complied with the conditions laid down under Section 18(A), (B) and (C) of Rule 5, Part III of the Republic Act No. 9513, 2009 IRR,[68] thus:

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:

(1) ***DOE Certificate of Registration* — issued to an RE Developer holding a valid RE Service/Operating Contract.** For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.

The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.

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67 *Id.*

68 *Id.* at 95.

> Any investment added to existing RE projects shall be subject to prior approval by the DOE.
>
> (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)*
>
> The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP0, unless declared otherwise by law.
>
> **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.**[69] (Emphasis in the original)

MGI argues that the inclusion of such requirement in the IRR, not found in the law, is unconstitutional, as IRRs may not go beyond the provisions of the law it implements.[70] The CTA *EB* pointed out, however, that Section 26 of Republic Act No. 9513 categorically states that the certification issued by the DOE-REMB 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 under the law.[71] Section 26 of Republic Act No. 9513 reads as follows:

> 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.
>
> The DOE, through the Renewable Energy Management Bureau shall issue said certification fifteen [] 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*

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69 *Id.* at 95–96.
70 *Id.* at 13.
71 *Id.* at 109.

> *government charged with the administration of the fiscal incentives abovementioned.* (Emphasis supplied)

Clearly, Section 26 gives government agencies, tasked with administering the incentives under Republic Act No. 9513, the authority to impose additional requirements to avail of said incentives on top of the registration requirements imposed under Sections 15.

Pursuant to this authority, the DOE promulgated the IRR of Republic Act No. 9513 or DOE Department Circular No. 2009-05-0008 on May 25, 2009, which required RE Developers to secure a Certificate of Endorsement from the DOE, on a per transaction basis in order to be qualified to avail of the incentives provided by the law.[72]

The Court notes that on December 24, 2021, the DOE has issued Department Circular No. DC2021-12-0042,[73] which amended DOE Department Circular No. 2009-05-0008. This amendment removed the requirement under Section 18 (C) of Department Circular No. 2009-05-0008 for RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment to secure a Certificate of Endorsement from the DOE on a per transaction basis to avail of the incentives provided under the RE Law.[74] Under DC2021-12-0042, RE Developers are automatically qualified to avail of the incentives under Republic Act No. 9513 after securing a Certificate of Registration from the DOE, with the exception of duty-free importation of RE machinery, equipment and materials.

It is important to note that this amendment came after the taxable year for which the refund in this case is claimed, i.e., 2013.

As pointed out by Justice Japar B. Dimaampao (**Justice Dimaampao**), the Court must determine whether, prior to the issuance of DOE Department Circular No. DC2021-12-0042, the DOE could validly impose a Certificate of Endorsement as a requirement for RE developers to enjoy VAT zero-rating in their sale of fuel or power generated from renewable sources of energy.

Under Section 25 of Republic Act No. 9513, the certification following registration with the DOE shall serve as basis of RE developers' entitlement to incentives provided in Chapter VII of the law:

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72 DOE Department Circular No. 2009-05-0008 (2009), part III, rule 5, sec. 18 (c).
73 DOE Department Circular No. DC2021-12-0042 (2021).
74 *Id.* (Whereas Clause).

> Section 25. Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment. – RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the Department of Energy, through the Renewable Energy Management Bureau. Upon registration, a certification shall be issued to each RE Developer and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act.

On the other hand, Section 26 of Republic Act No. 9513 states that certifications required to qualify RE developers to avail of the incentives in the law shall be issued by the DOE and shall be without prejudice to other further requirements that may be imposed by the concerned agencies charged with the particular incentives itemized in the law:

> 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 Department of Energy, through the Renewable Energy Management Bureau shall issue said certification [15] days upon request of the renewable energy developer or manufacturer, fabricator or supplier.
>
> 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.* (Emphasis supplied)

As observed by Justice Dimaampao, if the Court is to apply Section 25 as basis to conclude that the certification under Section 15 pertains only to registration with the DOE in order to avail of the incentives, it would render Section 26 nugatory. Notably, both provisions refer to qualifying and availing of the "incentives" under the law, without specifying which particular incentive under Section 15, or otherwise, they apply to. Surely, both provisions must be given effect.

From this, it can be reasonably concluded that, aside from registration, the DOE, and other regulatory agencies, may also require other certifications for parties to avail of the incentives granted under Republic Act No. 9513. The tenor of the provision likewise appears to delegate the determination of the kind of certification necessary to the DOE, as the primary agency tasked to implement the law.[75]

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[75] Republic Act No. 9513 (2008), sec. 5.

Such authority to grant certification, including the determination of the kind of certification necessary, is a valid form of subordinate legislation. Under the principle of subordinate legislation, the legislature may grant administrative agencies the power "to implement the broad policies laid down in a statute by 'filling in' the details" through administrative issuances.[76] In order to be valid, the delegation must satisfy the completeness test and the sufficient standard test.[77] A law is complete "when it sets forth therein the policy to be executed, carried out or implemented by the delegate."[78] The statute lays down a sufficient standard "when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority [and] announce the legislative policy and identify the conditions under which it is to be implemented."[79]

Here, Section 2 of Republic Act No. 9513 provides a clear policy to guide the DOE: *"[i]ncrease the utilization of renewable energy* by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and *promoting its efficient and cost-effective commercial application* by providing fiscal and nonfiscal incentives."

From the foregoing, it is evident that Section 15 of Republic Act No. 9513, in relation to Section 26, constitute valid subordinate legislation in favor of the DOE insofar as its authority to impose certification requirements is concerned.

Nonetheless, the other measure for the validity of an administrative issuance is that it should not override, supplant, or modify the law it seeks to implement.[80]

Republic Act No. 9513 originated from House Bill No. 4193 and Senate Bill No. 2046. House Bill No. 4193 contained a provision on VAT zero-rating of the sale of power generated from renewable sources of energy, but did not contain analogous provisions to Sections 25 and 26 of the enacted law. In contrast, Senate Bill No. 2046, or Committee Report No. 36, upon its submission to the Senate floor for consideration did not contain a provision for VAT zero-rating, and also did not have analogous provisions to Sections 25 and 26. However, these provisions were added during the period of

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76 *Department of Finance v. Asia United Bank*, G.R. Nos. 240163 et al., December 1, 2021 [Per J. Zalameda, Third Division].

77 *See Abakada Guro Party List v. Purisima*, 584 Phil. 246, 272 (2008) [Per J. Corona, *En Banc*].

78 *Id.*

79 *Id.*

80 *Department of Finance v. Asia United Bank*, G.R. Nos. 240163 et al., December 1, 2021 [Per J. Zalameda, Third Division].

amendments.[81] Sections 25 and 26 were originally introduced as Sections 25 and 27 of Senate Bill No. 2046 with the following wording:

> SEC. 25. *REGISTRATION OF RE DEVELOPERS AND LOCAL MANUFACTURERS, FABRICATORS AND SUPPLIERS OF LOCALLY-PRODUCED RENEWABLE ENERGY EQUIPMENT* – RE DEVELOPERS AND LOCAL MANUFACTURERS, FABRICATORS AND SUPPLIERS OF LOCALLY-PRODUCED RENEWABLE ENERGY EQUIPMENT SHALL REGISTER WITH THE DEPARTMENT OF ENERGY, THROUGH THE NATIONAL RENEWABLE ENERGY BOARD. UPON REGISTRATION A CERTIFICATION SHALL BE ISSUED TO EACH RE DEVELOPER AND LOCAL MANUFACTURER, FABRICATOR AND SUPPLIER OF LOCALLY-PRODUCED RENEWABLE ENERGY EQUIPMENT TO SERVE AS THE BASIS OF THEIR ENTITLEMENT TO INCENTIVES PROVIDED UNDER CHAPTER VII OF THIS ACT.
>
> SEC. 27. *SINGLE CERTIFICATION FROM THE DEPARTMENT OF ENERGY.* –
>
> A. THE DEPARTMENT OF ENERGY, THROUGH THE NATIONAL RENEWABLE ENERGY BOARD (NREB), SHALL ISSUE A SINGLE CERTIFICATION TO RENEWABLE ENERGY DEVELOPERS ON THE FOLLOWING:
>
> I. AUTHORITY TO IMPORT AND ENTITLEMENT TO DUTY FREE IMPORTATION OF MACHINERY, EQUIPMENT AND MATERIALS AND PARTS THEREOF;
> II. ENTITLEMENT TO TAX CREDIT ON DOMESTIC CAPITAL EQUIPMENT AND SERVICES;
> III. ENTITLEMENT TO SPECIAL REALTY TAX RATES ON EQUIPMENT AND MACHINERY;
> IV. ENTITLEMENT TO INCOME TAX HOLIDAY AND EXEMPTION AND/OR THE USE OF NET OPERATING LOSS CARRY-OVER (NOLCO);
> V. ENTITLEMENT TO ACCELERATED DEPRECIATION;
> VI. EXEMPTION FROM UNIVERSAL CHARGE;
> VII. EXEMPTION FROM PROVINCIAL ENVIRONMENTAL COMPLIANCE CERTIFICATE;
> VIII. EXEMPTION FROM WATER PERMIT FROM THE NATIONAL WATER RESOURCES BOARD (NWRB);
> IX. ALL OTHER NECESSARY MATTERS THAT SHOULD BE INDICATED IN THE CERTIFICATION.
>
> B. THE DEPARTMENT OF ENERGY, THROUGH THE NATIONAL RENEWABLE ENERGY BOARD (NREB),

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[81] 13 Journal, Senate, 14th Congress, 13th Session (September 1, 2008), p. 270; and 14 Journal, Senate, 14th Congress, 14th Session (September 2, 2008), p. 297.

> SHALL LIKEWISE ISSUE A SINGLE CERTIFICATION TO ALL MANUFACTURERS, FABRICATORS AND SUPPLIERS OF LOCALLY-PRODUCED RENEWABLE ENERGY EQUIPMENT AND COMPONENTS OF THE FOLLOWING:
>
> I. ENTITLEMENT TO TAX AND DUTY-FREE IMPORTATION OF COMPONENTS, PARTS AND MATERIALS;
> II. ENTITLEMENT TO TAX CREDIT ON DOMESTIC CAPITAL COMPONENTS, PARTS AND MATERIALS;
> III. ENTITLEMENT TO INCOME TAX HOLIDAY AND EXEMPTION; AND
> IV. ALL OTHER NECESSARY MATTERS THAT SHOULD BE INDICATED IN THE CERTIFICATION.
>
> THE DEPARTMENT OF ENERGY, THROUGH THE NATIONAL RENEWABLE ENERGY BOARD SHALL ISSUE SAID CERTIFICATION [15] DAYS UPON REQUEST OF THE RENEWABLE ENERGY DEVELOPER OR MANUFACTURER, FABRICATOR OR SUPPLIER.

The VAT zero-rating provision, referred to as the Madrigal Amendment,[82] was introduced in the succeeding Senate session:

> On page 16, after line 10, on behalf of Senator Madrigal, as proposed by Senator Zubiri and accepted by the Sponsor, there being no objection, the Body approved the insertion of a new sub-section (G) to read:
>
> (G) *[0%] VALUE ADDED TAX RATE.* – THE SALE OF POWER GENERATED FROM RENEWABLE SOURCES OF ENERGY SUCH AS, BUT NOT LIMITED TO, BIOMASS, SOLAR, WIND, HYDRO POWER, GEOTHERMAL, OCEAN ENERGY AND OTHER EMERGING ENERGY SOURCES USING SUCH TECHNOLOGIES AS FUEL CELLS AND HYDROGEN FUELS, SHALL BE SUBJECT TO ZERO PERCENT VALUE ADDED TAX, PURSUANT TO THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED BY REPUBLIC ACT NO. 9337. THIS PROVISION SHALL ALSO APPLY TO THE WHOLE PROCESS OF EXPLORING AND DEVELOPING RENEWABLE ENERGY RESOURCES UP TO ITS CONVERSION INTO POWER, INCLUDING BUT NOT LIMITED TO, THE SERVICE PERFORMED BY SUBCONTRACTORS AND/OR CONTRACTORS.[83]

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82 14 Journal, Senate, 14th Congress, 14th Session (September 2, 2008), p. 297.
83 *Id.*

The Senate, in deliberating the fiscal incentives under Section 15, approved the Escudero Amendment, which limited the grant of incentives to RE developers that were "Board of Investments (BOI)-registered and DOE-accredited."[84] When asked about the specific roles of both the BOI and the DOE in relation to the grant of incentives, the Senators had the following disquisition:

> Replying to the queries of Senator Enrile, Senator Angara affirmed that the accreditation of an RE producer will be done by the DOE while the processing of the incentives written in the law will be done by the BOI.
>
> Asked if the BOI has any discretion to add to or delete any of the incentives provided for in the bill, Senator Angara replied in the negative, saying that to his understanding there is already a list of mandatory incentives precisely to attract investors. He agreed with Senator Enrile that the BOI's duty is ministerial, merely the clearinghouse and the keeper of the records of the incentives given.
>
> Senator Enrile stated that the registration of renewable energy producers is the function of *the DOE which must ensure that they have met all the requirements to undertake the project in terms of capacity, technical skills, management capability and financial muscle*. Senator Angara agreed as he pointed out that the Committee sought to make the package more attractive. Further, he stated that if the proposed Act is passed into law and implemented correctly, within five years, the Philippines would be able to source almost half of its electricity supply from renewable energy and save close to [USD] 3 billion in import cost of crude oil. Aside from the financial savings, he said, the people would also benefit from cleaner air as a result of clean technology.
>
> As to the roles of the agencies, Senator Enrile clarified that *DOE would determine the financial and technical qualification of an RE producer and the BOI would give the incentives*. Senator Angara agreed.
>
> At this point, Senator Escudero confirmed that his proposed amendment is procedural and administrative and would not in any way diminish the incentives of the bill.
>
> Accepted by the Sponsor, there being no objection, the Escudero amendment was approved by the Body, subject to style.[85] (Emphasis supplied)

The provision was reworded during the bicameral conference into its present wording under Republic Act No. 9513. The precise role of the DOE in certifying the qualification of RE developers to the incentives was further refined during the discussion on Section 27 of Senate Bill No. 2046 (the precursor to Section 26 of Republic Act No. 9513):

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84 23 Journal, Senate, 14th Congress, 2nd Session (September 24, 2008), pp. 502–503

85 *Id.*

REP. VILLAFUERTE. 27, we object to it, we object to it being impractical.

CHAIRPERSON E. J. ANGARA. Why?

REP. VILLAFUERTE. Why do we require a single certification from all these? It may not happen just like that in actual operation. Can we ask the DOE, can you issue a single certification of authority to import, entitlement to tax credit, special realty rates, entitlement to income tax holiday, net operating loss, entitlement to accelerated depreciation. It cannot be done, it has to go through...

CHAIRPERSON E. J. ANGARA. *Teka muna para maintindihan naman* ng co-panel members *mo ha*, there is no comparable provision in the House version.

REP. VILLAFUERTE. Yes.

CHAIRPERSON E. J. ANGARA. The purpose of this single certification requirement is because of our feedback that even local governments would require a certification. So in order to simplify documentation and speed up and facilitate approvals, because we are trying to encourage, we are only requiring single certification. That's why... I think *naman* out of parliamentary courtesy, you should not object *naman* to a provision that we originated and you don't have any, *di ba*?

REP. VILLAFUERTE. Mr. Chairman, the point I'm raising is not an objection per se. What I'm saying that the DOE, and the Secretary is here, can you give us assurances because the delay will happen eh, *hindi pa nag-iimport, ayaw mo pa sila bigyan ng income tax holiday, hindi pa sila... gusto mo ng bigyan sila ng accelerated depreciation, hindi pa dumarating iyong equipment, gusto mo na kaagad sila kung ano-ano dito, it will not be* implemented as a single certification, *hindi ba*?

REP. ZUBIRI. Mr. Chair, just to add quickly. During the passage of the Bio-fuels Law, Manong, that's why we do not have a bio-fuels plant in existence today because *nahihirapan sila sa dami ng pinupuntahan nila* from the DA, the DENR, the NCIP, the DOE, *ang dami nilang pinupuntahan. At ang request talaga ng developers single certification na lang dahil pag meron sila nito, tuloy-tuloy na po iyong trabaho.*

REP. VILLAFUERTE. I'm sorry I have to say… why don't we just say that all certifications and all of these will emanate from the Department of Energy, *hindi ba*? The point I was raising is that, that it cannot be done as a single certification.

CHAIRPERSON E. J. ANGARA. Louie, *para hindi mo naman dino-dominate lahat*, Mitos, can you suggest the language?

REP. MAGSAYSAY. *Iyong ano lang naman ang ano niya iyong* single, per certification *nalang*.

CHAIRPERSON E. J. ANGARA. All certifications necessary shall be….

REP. MAGSAYSAY. Course through the Renewable Energy Management Bureau of the DOE

CHAIRPERSON E. J. ANGARA. *Okay iyon*, Secretary?

> REP. MAGSAYSAY. It's letter (b)[.]
>
> REP. *Hindi, hindi*, I'm not objecting, but I'm only saying put the phraseology correct.
>
> CHAIRPERSON E. J. ANGARA. *Iyon nga.*
>
> REP. VILLAFUERTE. *Ang sasabihin lang natin*, all certifications required to qualify RE developer to entitlement of incentives shall be issued by the Department of Energy...
>
> CHAIRPERSON E. J. ANGARA. No, no
>
> REP. VILLAFUERTE. *Dapat* you have to qualify for incentives.
>
> CHAIRPERSON E. J. ANGARA. Okay, accepted *na iyon.*[86]

What may be derived from the foregoing exchange is that Section 26 was intended as a blanket authority to the DOE to issue whatever necessary certification it deems fit to declare the RE developer entitled to the incentive it tries to avail. Indeed, the precursor to the provision mentions a single certification not only as a consequence of registration, but of specific "entitlements" to the various incentives. This intent should be read into the law.

However, this added certification requirement may be reasonably construed as inapplicable to VAT zero-rating in Section 15(g) of Republic Act No. 9513.

To recall, Section 26 of Republic Act No. 9513 was originally Section 27 of Senate Bill No. 2046. In the original provision, it enumerates the fiscal incentives found in Section 15 to which the DOE must certify in favor of the RE developer:

> I. AUTHORITY TO IMPORT AND ENTITLEMENT TO DUTY FREE IMPORTATION OF MACHINERY, EQUIPMENT AND MATERIALS AND PARTS THEREOF;
> II. ENTITLEMENT TO TAX CREDIT ON DOMESTIC CAPITAL EQUIPMENT AND SERVICES;
> III. ENTITLEMENT TO SPECIAL REALTY TAX RATES ON EQUIPMENT AND MACHINERY;
> IV. ENTITLEMENT TO INCOME TAX HOLIDAY AND EXEMPTION AND/OR THE USE OF NET OPERATING LOSS CARRY-OVER (NOLCO);
> V. ENTITLEMENT TO ACCELERATED DEPRECIATION;
> VI. EXEMPTION FROM UNIVERSAL CHARGE;

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[86] *Id.* at 518–519.

VII. EXEMPTION FROM PROVINCIAL ENVIRONMENTAL COMPLIANCE CERTIFICATE;
VIII. EXEMPTION FROM WATER PERMIT FROM THE NATIONAL
IX. WATER RESOURCES BOARD (NWRB); AND ALL OTHER NECESSARY MATTERS THAT SHOULD BE INDICATED IN THE CERTIFICATION.

The VAT zero-rating incentive for the sale of fuel or power generated from renewable sources of energy is not among the foregoing enumeration.

One of the fundamental statutory construction principles is that a person, object, or thing omitted from an enumeration must be held to have been omitted intentionally—*casus omisus pro omisso habendus est.* It applies when there is a reasonable certainty that a particular person, object, or thing has been omitted from a legislative enumeration.[87]

As observed by Justice Dimaampao, the Senate introduced the certification provision and took great pains to enumerate every other incentive under Section 15, but left out the VAT zero-rating provision. Concededly, some argument may be made that this omission may be due to the fact that the VAT zero-rating provision was introduced after Section 27 was inserted, as the Madrigal Amendment occurred in the succeeding session day, or that the catch-all provision under sub-paragraph (IX) suffices to cover that particular incentive. Entertaining this argument though does not match the deliberateness that is expected and, in fact, must be presumed by the Court from the Legislature when it enacts laws. Certainly, it would have been a simple matter to insert the VAT zero- rating provision in the enumeration in Section 27, but the Senate opted not to do so. Errors are not presumed, and the Court should accord respect to the deliberateness exhibited by Congress.

Consequently, while the DOE may impose further requirements before it can qualify the RE developer or their transactions to the fiscal incentives under Section 15, it cannot impose other certification requirements, such as a certificate of endorsement, to the VAT zero-rating incentive. In requiring RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment to obtain a Certificate of Endorsement on a per transaction basis to avail of the incentives provided under Republic Act No. 9513, the DOE exceeded the authority intended to be granted by the lawmakers. DOE DC2021-12-0042 has since removed this requirement.

Thus, as it stands, the only other requirement for VAT zero-rating qualification, aside from the conditions imposed by the NIRC, is the RE Developer's registration with the DOE. As MGI pointed out, it has complied

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87 *See People v. Manantan*, 115 Phil. 657, 664 (1962) [Per J. Regala, *En Banc*].

with this requirement, as evidenced by its Certificate of Registration No. GRESC 2011-01-025.[88]

MGI failed to prove the existence of zero-rated sales upon which the 2013 input VAT may be attributed

Nonetheless, as MGI has no proven sales during the subject taxable period, it still failed to establish its entitlement to its claim of refund.

MGI asserts that this Court should overturn the CTA *EB*'s assessment of Official Receipt No. 0501, which the CTA *EB* deemed illegible.[89] MGI insists, contrary to the CTA *EB*'s finding, that Official Receipt No. 0501 in fact demonstrates the pertinent details that will establish the existence of its zero-rated sales, i.e., the payor's name, date of transaction, payor's TIN, and the nature of service performed.[90] It argues that the CTA *EB* failed to consider the possibility of wear and tear or deterioration of the document from the time it filed its petition for review until the assailed Decision was rendered.[91] MGI also argues that respondent CIR did not comment on said document's legibility; thus, objections on such ground are now deemed waived.[92]

To the Court, this is a belated and unfounded attempt to cast doubt on the CTA *EB*'s ruling. It is well-established that the CTA's factual findings are binding on this Court and absent compelling reasons to scrutinize facts, only legal questions are subject to examination.[93] Even if we were to entertain MGI's request and conduct our own assessment of Official Receipt No. 0501, MGI's admission that the document had already experienced wear and tear or deterioration, resulting in its illegibility, would render this Court unable to do so.[94]

In the case at bar, both the CTA Division and *EB* ruled that MGI failed to establish the existence of zero-rated sales upon which the 2013 input VAT may be attributed. Based on the CTA Division's examination of MGI's quarterly VAT returns filed for TY 2013, MGI had no sales during said taxable period.[95] Moreover, its Accounting Manager admitted that MGI had

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88 *Rollo*, p. 31.
89 *Id.* at 24.
90 *Id.* at 38.
91 *Id.* at 28 and 40.
92 *Id.* at 39.
93 *See Phil. Airlines, Inc. v. Commissioner on Internal Revenue*, 823 Phil. 1043, 1063 (2018) [Per J. Leonen, Third Division].
94 *Rollo*, pp. 28 & 40.
95 *Id.* at 74.

no sales during TY 2013,[96] and its Legal Officer confirmed that it only made its sales to Trans-Asia Oil and Energy Development Corporation in February 2014.[97]

The CTA Division and *EB* based their findings on an examination of all pieces of evidence presented by MGI. MGI failed to show that the CTA committed grave abuse of discretion in making its factual determination. There is likewise no showing that the findings are based on speculation, conjecture, or misapprehension or mistake of facts.

Thus, this Court finds no reason to disturb the CTA's factual findings.

As this Court previously held, tax refunds partake the nature of exemption from taxation and, as such, must be looked upon with disfavor. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.[98] As MGI failed to prove the legal and factual bases of its claim for tax refund, its Petition should be denied.

FOR THESE REASONS, the instant Petition for Review on *Certiorari* is **DENIED.** The assailed Decision of the Court of Tax Appeals *En Banc*, dated November 26, 2020, and the Resolution, dated June 2, 2021, in CTA EB No. 2111 (CTA Case Nos. 9119, 9201, 9254, and 9336), are **AFFIRMED.**

SO ORDERED.

MARIA FILOMENA D. SINGH
Associate Justice

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96 *Id.*

97 *Id.* at 76.

98 *Commissioner of Internal Revenue v. Filminera Resources Corporation*, 885 Phil. 515, 540–541 (2020) [Per J. Lopez, First Division].

WE CONCUR:

See Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

See separate concurring opinion

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson

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

THIRD DIVISION

G.R. No. 256720 — MAIBARARA GEOTHERMAL, INC., Petitioner, **v. COMMISSIONER OF INTERNAL REVENUE,** Respondent.

Promulgated:

August 7, 2024

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CONCURRING OPINION

CAGUIOA, *J.*:

I agree with the *ponencia*'s conclusion that petitioner Maibarara Geothermal, Inc. (MGI) is not entitled to a refund for its failure to establish the existence of zero-rated sales upon which the claimed input VAT is attributed.

I submit this Concurring Opinion to highlight that a Certificate of Endorsement by the Department of Energy (DOE) is not required to qualify a transaction for zero-rating purposes under Section 108(B)(7) of the 1997 National Internal Revenue Code, as amended (1997 NIRC), in relation to Section 15(g) of Republic Act No. (RA) 9513,[1] otherwise known as the Renewable Energy Act of 2008. A Certificate of Endorsement is required only to avail of the incentive of duty-free importation of Renewable Energy (RE) machinery, equipment, and materials, and their subsequent sale, transfer, or disposition.

As to the second requisite under Section 112 of the 1997 NIRC, i.e., the taxpayer is engaged in zero-rated or effectively zero-rated sales, the Court of Tax Appeals *En Banc* (CTA EB) pronounced that a Certificate of Endorsement by the DOE is required to reap the benefit of VAT zero-rating:

> [T]he following documents must be secured by a RE Developer in order to qualify for VAT zero-rating, as contemplated under RA No. 9513 and its IRR, *to wit.*:
>
> 1. DOE Certificate of Registration;
> 2. Registration with the BOI; and
> 3. Certificate of Endorsement by the DOE.
>
> Here, records show that [MGI] was issued a DOE Certificate of Registration No. GRESC 2011-01-025 on 5 January 2011 and a Certificate of Registration No. 2011-006 by the Board of Investments on 7 January 2011.
>
> **However, there is no showing that [MGI] was issued a Certificate of Endorsement by the DOE on a per transaction basis. Without this third**

[1] Republic Act No. 9513 (2008), Renewable Energy Act of 2008.

> **requirement, [MGI's] alleged sales, if any, do not qualify for VAT zero-rating.**[2] (Emphasis supplied)

As the *ponencia* now states, an RE Developer is not required to obtain a Certificate of Endorsement issued by the DOE on a per transaction basis to avail of the VAT zero-rating incentives under RA 9513. While the DOE may impose further requirements before it can qualify an RE developer or their transactions to the fiscal incentives, it cannot impose other certification requirements, such as a Certificate of Endorsement, to the VAT zero-rating incentive as it does not appear to have been intended by the lawmakers. As it stands, the only other requirement for VAT zero-rating incentive aside from registration is the RE Developer's qualification under the conditions imposed by the 1997 NIRC.[3]

Indeed, a Certificate of Endorsement issued by the DOE is necessary only in two instances: (a) when an RE Developer intends to avail of the incentive of duty-free importation of RE machinery, equipment, and materials; and (b) any subsequent sale, transfer, or disposition of the imported capital equipment, machinery, or spare parts.

Here, MGI anchors its entitlement to zero-rated VAT on Section 15(g) of RA 9513, in relation to Section 108(B)(7) of the 1997 NIRC.

Section 15(g) of RA 9513 provides that an RE Developer's sale of fuel or power generated from renewable sources of energy, as well as its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities are subject to 0% VAT:

> 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.**

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2 *Rollo*, pp. 96-97, CTA *En Banc* Decision.
3 *Ponencia*, p. 24.

> 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)

To implement RA 9513, the DOE issued Department Circular (DC) No. DC2009-05-0008,[4] also known as the Implementing Rules and Regulations (IRR) of RA 9513, 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:
>
> (a) Sale of fuel from RE sources of 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;
>
> (b) Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers; and
>
> (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.

In relation to the foregoing provisions, Section 108(B)(7) of the 1997 NIRC provides that the sale of power or fuel generated through renewable sources of energy shall be subject to 0% VAT rate:

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

---

[4] Rules and Regulations Implementing Republic Act No. 9513 (2009).

. . . .

(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[5] implementing Section 108(B)(7) of the 1997 NIRC qualifies the applicability of such zero-rating:

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.

According to the CTA EB, a taxpayer must comply with the conditions laid down under Section 18(A), (B), and (C) of Part III, Rule 5 of the IRR of RA 9513, which prescribes the documents required to avail of the incentives for RE projects and activities:

PART III. INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES

RULE 5. GENERAL INCENTIVES AND PRIVILEGES FOR RENEWABLE ENERGY DEVELOPMENT

. . . .

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[5] Consolidated Value-Added Tax Regulations of 2005 (2005).

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:

(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 supplied)

While Section 18(C) of the IRR of RA 9513 requires the submission of a Certificate of Endorsement to avail of the incentives and privileges under RA 9513, **Section 15(g) of RA 9513 itself does not require such proof**. In fact, a closer reading of Section 15 of RA 9513 reveals that the term "endorsement" is only mentioned under paragraph (b) thereof, which is in connection with the duty-free importation of RE machinery, equipment and materials, and their subsequent sale, transfer, or disposition.

Section 15 of RA 9513 provides:

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:

(a) Income Tax Holiday (ITH) – For the first seven (7) years of its commercial operations, the duly registered RE developer shall be exempt from income taxes levied by the National Government.

Additional investments in the project shall be entitled to additional income tax exemption on the income attributable to the investment: *Provided*, That the discovery and development of new RE resource shall be treated as a new investment and shall therefore be entitled to a fresh package of incentives: *Provided, further*, That the entitlement period for additional investments shall not be more than three (3) times the period of the initial availment of the ITH.

(b) **Duty-free Importation of RE Machinery, Equipment and Materials.** – Within the first ten (10) years upon the issuance of a certification of an RE developer, **the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties**: *Provided, however*, That the said machinery, equipment, materials and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: *Provided, further*, **That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials and parts is made.**

Endorsement of the DOE must be secured before any sale, transfer or disposition of the imported capital equipment, machinery or spare parts is made: *Provided*, That if such sale, transfer or disposition is made within the ten (10)-year period from the date of importation, any of the following conditions must be present:

. . . .

(c) Special Realty Tax Rates on Equipment and Machinery – Any law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery, and other improvements of a registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: *Provided*, That in case of an integrated resource development and generation facility as provided under Republic Act No. 9136, the real property tax shall only be imposed on the power plant.

(d) Net Operating Loss Carry-Over (NOLCO) – The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss: *Provided, however*, That operating loss resulting from the availment of incentives provided for in this Act shall not be entitled to NOLCO.

(e) Corporate Tax Rate – After seven (7) years of ITH, all RE Developers shall pay a corporate tax of ten percent (10%) on its net taxable income as defined in the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337: *Provided*, That the RE Developer shall pass on the savings to the end-users in the form of lower power rates.

(f) Accelerated Depreciation – If, and only if, an RE project fails to receive an ITH before full operation, it may apply for Accelerated Depreciation in its tax books and be taxed based on such: *Provided*, That if it applies for Accelerated Depreciation, the project or its expansions shall no longer be eligible for an ITH. Accelerated depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE resources may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of the Department of Finance and the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Any of the following methods of accelerated depreciation may be adopted:

i) Declining balance method; and

ii) Sum-of-the years digit method.

(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.

(h) Cash Incentive of Renewable Energy Developers for Missionary Electrification – A RE developer, established after the effectivity of this Act, shall be entitled to a cash generation-based incentive per kilowatt hour rate generated, equivalent to fifty percent (50%) of the universal charge for power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for missionary electrification.

(i) Tax Exemption of Carbon Credits – All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes.

(j) Tax Credit on Domestic Capital Equipment and Services – A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and custom duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to

> an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer for purposes set forth in this Act: *Provided*, That prior approval by the DOE was obtained by the local manufacturer: *Provided, further*, That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE operating contract. (Emphasis supplied)

Clearly, Section 15(g) of RA 9513 does not mention that a Certificate of Endorsement by the DOE is required to avail of the 0% VAT incentive. On the contrary, a Certificate of Endorsement from the DOE is required only when the incentive sought to be claimed is the duty-free importation of RE machinery, equipment, materials, and parts thereof, as well as before any sale, transfer, or disposition of the imported capital equipment, machinery, or spare parts is made, pursuant to Section 15(b) of RA 9513.

Likewise, Section 13 of the IRR of RA 9513 reveals that the term "endorsement" is mentioned in relation to the exemption from duties on RE machinery, equipment, and materials. More specifically, these references occur within the context of the paragraph governing the sale or disposition of capital equipment, thus:

> **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:
>
> . . . .
>
> ***B. Exemption from Duties on RE Machinery, Equipment, and Materials***
>
> Within the first ten (10) years from the issuance of a Certificate of Registration to an RE Developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall be exempt from tariff duties.
>
> (1) ***Conditions for Duty-Free Importation*** – An RE Developer may import machinery and equipment, materials and parts thereof exempt from the payment of any and all tariff duties due thereon subject to the following conditions:
>
> (a) The machinery and equipment are directly and actually needed and will be used exclusively in the RE facilities for the transformation of and delivery of energy to the point of use;

> (b) The importation of materials and spare parts shall be restricted only to component materials and parts for the specific machinery and/or equipment authorized to be imported;
>
> (c) The kind of capital machinery and equipment to be imported must be in accordance with the approved work and financial program of the RE facilities; and
>
> (d) Such importation shall be covered by shipping documents in the name of the duly registered RE Developer/operator to whom the shipment will be directly delivered by customs authorities.
>
> (2) ***Sale or Disposition of Capital Equipment*** – Any sale, transfer, assignment, donation, or other modes of disposition of originally imported capital equipment/machinery including materials and spare parts, brought into the RE facilities of the RE Developer which availed of duty-free importation within ten (10) years from date of importation shall require prior **endorsement** of the DOE. Such **endorsement** shall be granted only if any of the following conditions is present:
>
> (a) If made to another RE Developer enjoying tax and duty exemption on imported capital equipment;
>
> (b) If made to a non-RE Developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;
>
> (c) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and
>
> (d) For reasons of proven technical obsolescence as may be determined by the DOE.
>
> When the aforementioned sale, transfer, or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer, or disposition shall require prior **endorsement** by the DOE and shall no longer be subject to the payment of taxes and duties.
>
> Within six (6) months from the issuance of this IRR, the DOF/Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR) shall, in consultation with the DOE, formulate the necessary mechanisms/guidelines to implement this provision. (Emphasis supplied)

It is the duty of the Court to apply the law as it is worded.[6] A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo,* or "speech is the index of intention." Furthermore,

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[6] *Macalino v. Commission on Audit*, G.R. No. 253199, November 14, 2023, p. 4 [Per J. Marquez, *En Banc*]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website, *available at* https://sc.judiciary.gov.ph/253199-raul-f-macalino-vs-commission-on-audit/.

there is the maxim *verba legis non est recedendum,* or "from the words of a statute there should be no departure."[7]

Here, the words used in Section 15 of RA 9513 and Section 13 of the IRR of RA 9513 are clear and free from any doubt or ambiguity. Based on *verba legis,* a Certificate of Endorsement is required only for the duty-free importation of RE machinery, equipment, materials, and parts thereof, as well as their subsequent sale, transfer, or disposition. Notably absent from Section 15(g) of RA 9513, which pertains to the VAT-zero rating incentive for RE Developers, is any mention of the requirement for a Certificate of Endorsement. Thus, RA 9513 and its IRR must be interpreted according to their clear and unambiguous language, which does not include a Certificate of Endorsement for the VAT zero-rating incentive.

The absence of any reference to the Certificate of Endorsement in Section 15(g) of RA 9513 suggests that the lawmakers did not intend for this endorsement to be a prerequisite for availing of the VAT zero-rating incentive. If such a requirement were intended, it would have been explicitly stated within the provision, similar to how it is mentioned in Section 15(b) of RA 9513 concerning the duty-free importation of RE machinery, equipment, materials, and parts thereof, as well as before any sale, transfer, or disposition of the imported capital equipment, machinery, or spare parts is made.

The Court may not construe a statute that is free from doubt; neither can the Court impose conditions or limitations when none is provided for. While tax refunds are in the nature of tax exemptions and are construed *strictissimi juris* against the taxpayer, tax statutes shall be construed strictly against the taxing authority and liberally in favor of the taxpayer, for taxes, being burdens, are not to be presumed beyond what the statute expressly and clearly declares.[8]

Moreover, the imposition of additional requirements not expressly provided for in RA 9513 could lead to confusion in the application of VAT zero-rating incentives of RE Developers. This could hinder the development of renewable energy resources, which is contrary to the declared policy of RA 9513 to "[i]ncrease the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and nonfiscal incentives,[9] as well as to "[e]ncourage the development and utilization of renewable energy resources."[10]

Requiring a Certificate of Endorsement for every incentive provided under RA 9513 would not only be overly burdensome but could also detract from the effectiveness of the law in achieving its objectives. It would impose an additional

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7 *Tumabini v. People*, 871 Phil. 289, 304 (2020) [Per J. Gesmundo, Third Division].

8 *Commissioner of Internal Revenue v. Philex Mining Corp.*, 890 Phil. 840, 863 (2020) [Per J. Lopez, Second Division].

9 RA 9513, sec. 2(b).

10 RA 9513, sec. 2(c).

burden on RE Developers to avail themselves of the zero-rating VAT incentive despite no explicit statutory mandate for such a requirement.

Additionally, Section 26 of RA 9513 provides that it is the DOE, through the Renewable Energy Management Bureau (REMB), that shall issue all certifications required to qualify RE Developers to avail themselves of the incentives under RA 9513:

> 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.**
>
> 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)

While Section 18(C) of the IRR of RA 9513 specifies that the Certificate of Endorsement is issued by the DOE, through the REMB, it is necessary to look into the DOE's Citizen Charter for 2023,[11] which provides the summary of processes for REMB:

RENEWABLE ENERGY MANAGEMENT BUREAU (REMB)
SUMMARY OF PROCESSES

. . . .

PROCESSES	DURATION	CLASSIFICATION
1. Accreditation of Manufacturers, Fabricators and Suppliers of Locally Produced RE Equipment and Components	31 Calendar Days	Highly Technical
2. Amendment of RE Contract	31 Calendar Days	Highly Technical
3. Certificate of Registration for Own-Use	28 Calendar Days	Highly Technical
4. Conversion to the New Renewable Energy (RE) Contract Template	31 Calendar Days	Highly Technical

[11] Department of Energy, Citizen's Charter 2023 (2nd Ed.), *available at* https://www.doe.gov.ph/sites/default/files/pdf/citizen_charter/DOE-2023-Citizen-s-Charter-2nd-Edition-version-2.pdf.

5. Renewable Energy Contract Application	31 Calendar Days	Highly Technical
6. Issuance of Endorsement to other Concerned National Government Agencies and Local Government Units	5 Calendar Days	Complex
7. *Processing of Safety Officers Permit for Renewable Energy Developers (ISO Certified)	11 Calendar Days	Highly Technical
8. Revision of Work Program	16 Calendar Days	Highly Technical
9. Issuance of Certificate of Endorsement (COE) for Duty-Free Importation Certification (DFIC)	22 Calendar Days	Highly Technical
10. Assignment/Transfer of Renewable Energy Service Contract	31 Calendar Days	Highly Technical
11. Request for Reinstatement of RE Contract	31 Calendar Days	Highly Technical
12. Pre-Application Process (for Geothermal, Hydropower, Ocean, Wind and Solar, Projects – Except for Solar Rooftop & Solar Microgrid)	17 Working Days	Highly Technical
13. Transition from Pre-Development to Development Stage	31 Calendar Days	Highly Technical
14. Issuance of Endorsement to Purchase/Transfer/Move Explosives	11 Calendar Days	Highly Technical[12] (Emphasis supplied)

Nowhere in the foregoing table does it mention that the REMB issues a Certificate of Endorsement for the zero-rated incentive under Section 15(g) of RA 9513. On the contrary, the endorsements issued by REMB are for the following: (a) endorsement to other concerned national government agencies and local government units; (b) endorsement for duty-free importation; and (c) endorsement to purchase/transfer/move explosives. **Thus, it is impossible for taxpayers to secure a Certificate of Endorsement from REMB for VAT zero-**

[12] *Id.* at 79–80.

rating purposes, as the bureau does not even have the mandate to provide such certification according to its own established guidelines. The functions listed in the table clearly demonstrate that the endorsements issued by REMB are not related to VAT zero-rating incentives.

Notably, the DOE issued DC No. DC2021-12-0042[13] on December 24, 2021, amending Section 18(C) of the IRR of RA 9513, which states that RE Developers are automatically qualified to avail of the incentives under RA 9513 after securing a Certificate of Registration from the DOE, with the exception of duty-free importation of RE machinery, equipment, and materials:

> **Section 2. AMENDMENT TO SECTION 18(C) OF THE RE LAW IRR.** Section 18(C) of DC No. DC2009-05-0008 is hereby amended to read as follows:
>
> "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.**["] (Emphasis supplied)

Although DOE DC No. DC2021-12-0042 was not yet issued at the time of filing of MGI's refund claim in 2015, its issuance reinforces the position that a Certificate of Endorsement by the DOE is not a requirement to accord 0% VAT rate on an RE Developer's sale of fuel or power generated from renewable sources of energy, as well as purchases of local supply of goods, properties, and services needed for the development, construction and installation of its plant facilities.

However, with the recent amendment in DOE DC No. DC2021-12-0042, a question arises: Did the amendment signify the removal of the Certificate of

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[13] 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" (2021).

Endorsement for VAT zero-rating incentive, which implies that it was a mandatory requirement prior to the amendment? The answer to this question is no.

The language of the amendment itself does not explicitly state the removal of the Certificate of Endorsement for VAT zero-rating under RA 9513. To my mind, the essence of the amendment is to dispel misconceptions by reaffirming that the Certificate of Endorsement was never meant to be universally mandatory for all fiscal incentives under RA 9513. It aims to establish a clear understanding of when such certificate is necessary, which is only when RE Developers import equipment, materials, parts, and components on a per importation basis. Simply put, the recent amendment regarding the Certificate of Endorsement aims to clarify rather than remove such requirement for all the fiscal incentives, with the exception of duty-free importation under Section 15(b) of RA 9513.

Another point to consider is that Section 3 of RR No. 7-2022,[14] which implements the tax provisions of RA 9513, provides that a Certificate of Endorsement from the DOE is only required for the importation of components, parts, and materials necessary for the manufacture and/or fabrication of RE equipment:

> **SECTION 3. REQUIRED CERTIFICATIONS/ACCREDITATIONS FROM APPROPRIATE GOVERNMENT AGENCIES FOR THE AVAILMENT OF THE TAX INCENTIVES – RE developers** and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall secure the certifications/accreditations listed hereunder before any incentive provided for in the Act may be availed of.**
>
> ***A. Registration/Accreditation with the DOE*** – 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 secured and submitted to the BIR:
>
> (1) ***DOE Certificate of Registration*** – issued to an RE Developer holding a valid RE Service/Operating Contract. For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has previously executed with the DOE. The DOE Certificate of Registration is issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment. Any investment added to existing RE projects is subject to prior approval by the DOE.
>
> (2) ***DOE Certificate of Accreditation*** – issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements as determined by the DOE, in coordination with the DTI.

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[14] Tax Incentives under the Renewable Energy Act of 2008 and the Policies and Guidelines for the Availment Thereof (2022).

> ***B. Certificate of Endorsement by the DOE*** – RE Developers shall secure the Certificate of Endorsement from the DOE prior to the first year of availment of the 10% corporate income tax rate incentive.
>
> Manufacturers, fabricators, and suppliers of locally produced RE equipment **who import components, parts, and materials necessary for the manufacture and/or fabrication of RE equipment shall secure a Certificate of Endorsement from the DOE, through the REMB, on a per importation basis**.
>
> ***C. Registration with the Board of Investments (BOI)*** – To qualify for incentives under the Act, RE developers, manufacturers, fabricators, and suppliers of locally-produced equipment shall register with the BOI.
>
> ***D. Certificate of ITH Entitlement (CE)*** – Issued by the BOI, the CE is a required attachment to the current annual ITR to be filed with the BIR. The ITH shall only be applied to the registered activity indicated in the CE. Failure to attach the CE to the ITR may result to the forfeiture of the ITH incentive for the covered taxable year. (Emphasis supplied)

Similar to DOE DC No. DC2021-12-0042, while RR No. 7-2022 was not yet effective at the time of MGI's refund claim in 2015, such BIR issuance supports the view that a Certificate of Endorsement by the DOE is not a requirement for an RE Developer to avail of the VAT zero-rating incentive under Section 108(B)(7) of the 1997 NIRC in relation to Section 15(g) of RA 9513.

In fact, RR No. 7-2022 clarifies that the local suppliers of goods, properties, and services shall require from an RE Developer only a copy of the latter's Board of Investment (BOI) Registration and DOE Registration for purposes of availing the 0% VAT incentive. It is worthy to emphasize that RR No. 7-2022 does not make any mention of the requirement for a Certificate of Endorsement from the DOE for purposes of VAT zero-rating, thus:

> **SECTION 4. FISCAL INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES** – The following provisions shall govern the tax incentives and treatments on the DOE-certified existing and new RE developers of RE facilities in consultation with BOI, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications:
>
> . . . .
>
> ***E. Zero Percent Value-Added Tax Rate*** – The 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, shall be subject to zero percent (0%) value-added tax (VAT) pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended: *Provided*, that ancillary services generated through renewable sources of energy shall also be subject to zero percent (0%) VAT.

> On the other hand, the purchase by an RE Developer of local goods, properties, and services needed for the development, construction, and installation of the plant facilities of RE Developers; and the 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 shall also subject to zero percent (0%) VAT.
>
> Accordingly, local suppliers/sellers of goods, properties, and services of duly-registered RE developers should not pass on the 12% VAT on the latter's purchases of goods, properties and services that will be used for the development, construction and installation of their power plant facilities. This includes 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.
>
> **The local suppliers of goods, properties, and services shall require from the RE Developer a copy of the latter's BOI Registration and DOE Registration for purposes of availing the zero percent (0%) VAT incentive.** (Emphasis supplied)

In the recent case of *CBK Power Company Limited v. CIR*[15] (*CBK*), the Court applied RR No. 7-2022 in ruling that an RE Developer can only avail of the fiscal incentives under RA 9513, including VAT at zero rate, after registration with the DOE and the DOE's issuance of the corresponding certificate:

> **While RR No. 7-2022 was issued on June 22, 2022 and does not cover CBK's claim in this case, the BIR's contemporaneous interpretation of the registration requirement as a condition *sine qua non* for entitlement to the fiscal incentives under Republic Act No. 9513 also carries persuasive weight.** Thus, the express language of Republic Act No. 9513, coupled with the DOE and the BIR's consistent contemporaneous interpretation, leads to the conclusion that **an RE Developer can only avail of the fiscal incentives under Republic Act No. 9513, including VAT at zero rate, after registration with the DOE and the DOE's issuance of the corresponding certificate**, in addition to the other requirements provided in the DOE IRR and RR No. 7-2022.[16] (Emphasis supplied)

To my mind, the "corresponding certificate" referred to in *CBK* is the DOE Certificate of Registration and not the Certificate of Endorsement.

The statement below in *CBK,* however, may suggest that a Certificate of Endorsement by the DOE is necessary for all fiscal incentives under RA 9513, including VAT zero-rating:

> Consistent with the DOE IRR, Section 3 [of RR No. 7-2022] lists the following **certifications which must be obtained before an RE Developer can avail of the fiscal incentives under Republic Act No. [9513]**: DOE Certificate of Registration, DOE Certificate of Accreditation, **Certificate of**

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[15] G.R. No. 247918, February 1, 2023 [Per J. Singh, Third Division], *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68932.

[16] *Id.* at 15–16. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

> **Endorsement by the DOE**, Registration with the BOI, and Certificate of Income Tax Holiday Entitlement.[17] (Emphasis supplied)

Still, it is imperative to underscore that the Court's ruling in *CBK* pertains to a situation where the RE Developer was not even registered with the DOE nor with the BOI—which are essential requirements to avail of VAT zero-rating under RA 9513. The absence of registration with the DOE and the BOI, as highlighted in *CBK*, rendered the issue of Certificate of Endorsement irrelevant in that particular case.

The Court even mentioned in *CBK* the pertinent portion in RR No. 7-2022 that "[t]he local suppliers of goods, properties, and services shall require from the RE Developer a copy of the latter's BOI Registration and DOE Registration for purposes of availing the 0% VAT incentive." This underscores that there is no requirement to present a Certificate of Endorsement for VAT zero-rating.

In sum, I agree with the disposition reached for this case that MGI's Petition should be **DENIED**, as it is not entitled to claim a refund or issuance of tax credit certificate of its unutilized input VAT for the first, second, third and fourth quarters of taxable year 2013, solely on the ground that it failed to prove the existence of zero-rated or effectively zero-rated sales, to which the input taxes it incurred may be attributed.

I also completely agree that MGI complied with the requirement that the taxpayer be engaged in zero-rated or effectively zero-rated sales. As an RE Developer, MGI properly presented only its DOE and BOI Certificates of Registration to be entitled to the 0% VAT incentive. MGI need not submit the Certificate of Endorsement by the DOE to qualify for VAT zero-rating. The Certificate of Endorsement is required only for duty-free importation of RE machinery, equipment, materials, and parts thereof, as well as their subsequent sale, transfer, or disposition—an incentive not claimed by MGI.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[17] *Id.* at 15. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

THIRD DIVISION

G.R. No. 256720 – MAIBARARA GEOTHERMAL, INC, Petitioner, **v. COMMISSIONER OF INTERNAL REVENUE,** Respondent.

Promulgated:

August 7, 2024

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Separate Concurring Opinion

INTING, *J.*:

The *ponencia* affirms the Decision of the Court of Tax Appeals *En Banc* (CTA EB) which denies the application for refund filed by petitioner Maibarara Geothermal, Inc. (MGI). The denial is anchored on two grounds: (1) MGI's failure to establish its zero-rated sales; and (2) prior to the issuance of Department of Energy (DOE) Department Circular No. DC2021-12-1142, the DOE and other regulatory agencies may require other certifications before a Renewable Energy (RE) developer may qualify to the fiscal incentives under Section 15 of Republic Act No. 9513 or the Renewable Energy Act of 2008 (RE Law), but the added certification requirement is inapplicable to VAT zero-rating in Section 15(g) of the RE Law.

I agree with the *ponencia*'s conclusion that MGI is not entitled to a refund for its failure to establish the existence of zero-rated sales upon which the claimed input VAT is attributed, and that the DOE may not require an added certification requirement before an RE developer can avail of the VAT zero-rating incentive under the RE Law.

However, I submit this Separate Concurring Opinion to highlight that the DOE's role in the implementation of the RE Law is limited to the determination of the financial and technical qualifications of RE developers—to "ensure that they have met all the requirements to undertake the project in terms of capacity, technical skills, management capability and financial muscle."[1]

Notably, a DOE Certificate of Endorsement requirement only appears in Section 15(b) of the RE Law on the incentive of duty-free importation of RE machinery, equipment and materials, and their subsequent sale, transfer, or disposition. Thus, the DOE cannot extend this Certificate of Endorsement requirement to other incentives, as doing so would defeat the declared policies of the RE Law; that is, to "accelerate the exploration and development of renewable energy resources," "increase the utilization of renewable energy," and "encourage the development and utilization of renewable energy

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[1] 23 Journal, Senate, 14th Congress, 23rd Session (September 24, 2008), pp. 502–503

resources."[2]

It can be inferred from the deliberations of the House of Representatives on House Bill No. 4913 that the lawmakers wanted to provide a safeguard against the improper use of incentives, particularly, on duty-free importation, viz.:

> REP. GOLEZ. . . .
> Now, first of all, Madam Speaker, I'd like to tackle the general incentives under Chapter VII of the bill. I note. Madam Speaker. that the incentives are very, similar to the Investment Incentives Act of way back when the distinguished Sponsor was the Minister of Trade and Industry, when we were talking of BOI incentives. For example, duty-free importation of machinery equipment and materials, net operating loss carryover, accelerated depreciation - well, there was no value-added tax during the IPP days.
>
> My concern, Madam Speaker, is what was experienced also in the implementation of the Investment Incentives Act, even today, when we're talking of incentives being improperly used and equipment imported under duty-free importation being diverted for other purposes other than the, intended use of the project. The question now is, how do we avoid this? For example, we may be talking of machinery, equipment, materials and parts directly and actually needed and used for these RE facilities that are also usable in projects and operations not covered by this Renewable Energy Bill if it comes into law.
>
> REP. VILLAFUERTE. Madam Speaker. this bill provides for safeguards where any sale of a duty-free equipment or transfer, or disposition made within, the six-year period from the date of importation, must meet the following conditions. It can be done, so as to prevent abuse, if made to another RE developer enjoying tax and duty-free exemption on imported capital equipment. You know, that transfer to an entity that is also involved in renewable energy is allowed.
>
> Now, the second is that, if made to a non-renewable energy developer but upon payment of any taxes and duties due on the net book value of the capital equipment to be sold.
>
> The third is the exportation of the used capital equipment. machinery spare parts or those required for RE redevelopment.
>
> The last is for reasons of proven technical obsolescence. Unless any of the enumerated conditions are met, there will be sanctions and they will have to pay the taxes that were originally due as if they were not duty-free.
>
> I think all government, particularly BOI, has learned many lessons about

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[2] Republic Act No. 9513, sec. 2.

> the point raised by the Gentleman from Parañaque and that is a very good point and that is something that all of us in government must guard against. That's why we have limited the opportunity for a resale of duty-free imported equipment under only certain selective situations and no other.[3]

Meanwhile, under Section 27 of Senate Bill No. 2046, a single certification from the DOE would be sufficient to entitle an RE Developer to all the incentives under the proposed law. In response, House Representative Luis R. Villafuerte, Sr. expressed his reservations on the Senate's proposed single DOE certification requirement during the bicameral conference, *viz.*:

> REP. VILLAFUERTE. 27, we object to it, we object to it being impractical.
>
> CHAIRPERSON E. J. ANGARA. Why?
>
> REP. VILLAFUERTE. Why do we require a single certification from all these? It may not happen just like that in actual operation. Can we ask the DOE, can you issue a single certification of authority to import, entitlement to tax credit, special realty rates, entitlement to income tax holiday, net operating loss, entitlement to accelerated depreciation. It cannot be done, it has to go through…
>
> CHAIRPERSON E. J. ANGARA. *Teka muna para maintindihan naman ng* co-panel members *mo ha*, there is no comparable provision in the House version.
>
> REP. VILLAFUERTE. Yes.
>
> CHAIRPERSON E. J. ANGARA. The purpose of this single certification requirement is because of our feedback that even local governments would require certification. So in order to simplify documentation and speed up and facilitate approvals, because we are trying to encourage, we are only requiring single certification. That's why… I think *naman* out of parliamentary courtesy, you should not object *naman* to a provision that we originated and you don't have any, *di ba*?
>
> REP. VILLAFUERTE. Mr. Chairman, the point I'm raising is not an objection per se. What I'm saying that the DOE, and the Secretary is here, can you give us assurances because the delay will happen eh, *hindi pa nag iimport, ayaw mo pa sila bigyan ng income tax holiday, hindi pa sila… gusto mo ng bigyan sila ng accelerated depreciation, hindi pa dumarating iyong equipment, gusto mo na kaagad sila kung ano-ano dito, it will not be* implemented as a single certification, *hindi ba*?
>
> REP. ZUBIRI. Mr. chair, just to add quickly. During the passage of the Bio fuels Law, Manong, that's why we do not have a bio-fuels plant in existence today because *nahihirapan sila sa dami ng pinupuntahan nila from the* DA,

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[3] JOURNAL, HOUSE 14th Congress 1ST Session (June 10, 2008), pp. 411–412.

> the DENR, the NCIP, the DOE, *ang dami nilang pinupuntahan. At ang request talaga ng developers single certification na lang dahil pag meron sila nito, tuloy-tuloy na po iyong trabato*.
>
> REP. VILLAFUETE. I'm sorry I have to say… why don't we just say that all certifications and all of these will emanate from the Department of energy, *hindi ba*? The point I was raising is that, that it cannot be done as a single certification.
>
> CHAIRPERSON E. J. ANGARA. Louie, *para hind imo naman dino dominate lahat*, Mitos, can you suggest the language?
>
> REP. MAGSYASAY. *Iyong ano lang naman ang ano niya iyong single, per certification nalang*.
>
> CHAIRPERSON E.J. ANGARA. All certifications necessary shall be….
>
> REP. MAGSAYSAY. Course through the Renewable Energy Management Bureau of the DOE.
>
> CHAIRPERSON E. J. ANGARA. *Okay iyon*, Secretary?
> REP. MAGSAYSAY. It's better (b)[.]
>
> REP. *Hindi, hindi*, I'm not objecting, but I'm only saying put the phraseology correct.
>
> CHAIRPERSON E. J. ANGARA. *Iyon nga.*
>
> REP. VILLAFUERTE. *Ang sasabihin lang natin,* all certifications required to qualify RE developer to entitlement of incentives shall be issued by the Department of Energy…
>
> CHAIRPERSON E. J. ANGARA. No, no.
>
> REP. VILLAFUERTE. *Dapat* you have to qualify for incentives.
>
> CHAIRPERSON E.J. ANGARA. Okay, accepted na iyon.[4]

Thus, as a compromise, the lawmakers introduced Section 26 to the RE Law:

> 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 Department of Energy, through the Renewable Energy Management Bureau shall issue said certification [15] days upon request of

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[4] *Id.* at 518–519.

the renewable energy developer or manufacturer, fabricator or supplier.

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.*

Notably, Section 26 of the RE Law provides that all certifications required for RE developers to be entitled to avail of the incentives shall be issued by the DOE through its Renewable Energy Management Bureau. As an additional safeguard, the last paragraph of Section 26 was introduced empowering the concerned agencies charged with the administration of fiscal incentives, that is, the Bureau of Internal Revenue and the Bureau of Customs, to impose further requirements in recognition of their institutional knowledge. Contrary to the *ponencia*, the last paragraph of Section 26 of the RE Law does not authorize the DOE to impose certification requirements in addition to the requirements provided under the RE Law. Thus, the DOE cannot extend the DOE Certification of Endorsement requirement to other incentives other than the duty-free importation incentive.

To stress, the purpose of the law is to encourage investment in the RE industry, not to discourage investments by the DOE's imposition of unnecessary certification requirements from RE developers.

Nonetheless, this issue has been rendered *moot* by the DOE's issuance of Department Circular No. DC2021-12-1142 on December 24, 2021. As astutely pointed out by Associate Justice Alfredo Benjamin S. Caguioa, Section 18(c) of the IRR, as amended by Department Circular No. DC 2021-12-1142, now provides that a DOE Certificate of Endorsement is only required from RE developers that import RE equipment, materials, parts, and components on a per importation, in order to avail themselves of duty-free importation. As to other incentives provided under Republic Act No. No. 9513, RE developers are automatically qualified to avail themselves of these incentives after securing a Certificate of Registration.

As a general rule, a statute or an administrative rule shall have no retroactive effect unless the contrary is provided. However, the rule is subject to exceptions, such as when the statute creates new rights, or when the statute is remedial or curative.[5]

Notably, Section 6 of Department Circular No. DC2021-12-1142 does not provide for its retroactive application, viz.:

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[5] *Superiora Locale Dell' Istituto Delle Suore Di San Giuseppe Del Caburlotto, Inc. v. Republic*, G.R. No. 242781, June 21, 2022, *citing Pasig v, Rizal*, G.R. No. 213207, February 15, 2022.

> Section 6. EFFECTIVITY. This Circular shall take effect fifteen days following its publication in two (2) newspapers of general circulation and submission to the University of the Philippines Law Center – Office of National Administrative Register (UPLC-ONAR).

Prior to the amendment, every sale by RE developers should bear a DOE Certificate of Endorsement in order to qualify for zero-rating. Stated differently, without a DOE Certificate of Endorsement, the sale of power generated from renewable sources of energy by RE developers are subject to 12% VAT. Consequently, RE developers cannot file a claim for tax refund or credit of excessive or unutilized input VAT under Section 112(a) of the NIRC even if the input taxes claimed are attributable to sale of power generated from renewable sources of energy because sales without a DOE Certificate of Endorsement are not qualified for zero-rating under the IRR. This requirement is excessively burdensome not only to the RE developers but also to the Renewable Energy Management Bureau of the DOE in view of the volume of sale transactions of RE developers all over the country that it had to endorse on a per transaction basis. Such overly bureaucratic requirement only serves as a setback for the declared policies of the RE Law to "accelerate the exploration and development of renewable energy resources," "increase the utilization of renewable energy," and "encourage the development and utilization of renewable energy resources."[6]

A reading of the "WHEREAS" clauses of Department Circular No. DC2021-12-1142 would show that the circular was intended to correct the deleterious effects of expanding the DOE Certificate of Endorsement requirement to all incentives under the RE Law on a per transaction basis:

> WHEREAS, in implementing Section 26 of the RE Law, Section 18(C) of the RE Law IRR requires RE Developers and manufacturers, fabricators and suppliers of locally-produced RE equipment to secure a "Certificate of Endorsement from the DOE, through the Renewable Energy Management Bureau ("REMB"), on a per transaction basis" to avail of the incentives provided under the RE Law;
>
> WHEREAS, Republic Act No. 11032 or the Ease of Doing Business Act and Republic Act No. 11234 or the Energy Virtual One Stop Shop or EVOSS Law were passed mandating the streamlining of government processes and eliminating red tape in government transactions to promote the ease of doing business; and
>
> WHEREAS, cognizant of the need to address implementation gaps, promote efficiency in government processes, and ensure that fiscal

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[6] Republic Act No. 9513, sec. 2.

> incentives are property availed of, the DOE deemed it necessary to amend Section 13(E) and Section 18(C) of the RE Law IRR.

In view of the foregoing, Department Circular No. DC2021-12-1142 should be given retroactive application as it is a c*urative amendment* that remedied the implementation gaps and inefficiencies caused by the IRR. In addition, the retroactive application of Department Circular No. DC2021-12-1142 will not adversely affect any vested right and is more in keeping with the declared policies of the RE Law.

HENRI JEAN PAUL B. INTING
Associate Justice