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