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.*

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[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.