Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Petitioner,

CTA EB No. 1376
(CTA Case Nos. 8510, 8546 & 8595)

-versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1378
(CTA Case Nos. 8510, 8546 & 8595)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

-versus -

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Respondent.

Promulgated:

OCT 18 2017 4:08 p.m.

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DECISION

CASANOVA, *J.*:

These are consolidated appeals, *via* Petitions for Review, respectively filed by Deutsche Knowledge Services Pte. Ltd.[1] on November 16, 2015 and by the Commissioner of Internal Revenue[2] on November 23, 2015, pursuant to Section 2 (a)(1)[3] Rule 4 of the Revised Rules of the Court of Tax Appeals[4] (RRCTA). The Petitions seek the partial reconsideration of the Amended Decision[5] dated October 13, 2015, and Decision[6] dated May 8, 2015, rendered by the Court of Tax Appeals (CTA) Third Division, which ordered the Commissioner of Internal Revenue to refund or issue a tax credit certificate in favor of Deutsche Knowledge Services Pte. Ltd. for its unutilized excess input value-added tax (VAT) for zero-rated sales for the 2nd, 3rd, and 4th quarters of calendar year (CY) 2010 in the reduced amount of ₱51,726,310.11.

Deutsche Knowledge Services Pte. Ltd. ("DKS" for brevity) is a foreign corporation organized and existing under the laws of Singapore, with address at Net Quad Center, 31st Street corner 4th Avenue, E-Square Zone, Crescent Park West, Taguig City. It is licensed and authorized to conduct business in the Philippines as a Regional Operating Headquarters (ROHQ) by the Securities and Exchange Commission to provide qualifying services of general administration and planning, business planning and coordination, sourcing/procurement of raw materials and components, corporate-finance advisor services, marketing control and sales promotion, training and personnel management, logistic services, research and development services and product development, technical support and maintenance, data processing and communication and business development to its affiliates in the Philippines and abroad.

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[1] CTA *En Banc* Rollo (CTA EB No. 1376), pp. 7-38
[2] CTA *En Banc* Rollo (CTA EB No. 1378), pp. 10-23
[3] "**SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;"

[4] Administrative Matter No. 05-11-07-CTA, November 22, 2005
[5] Division Docket, Vol. III (CTA Case No. 8510), pp. 1491-1508
[6] *Ibid.*, pp. 1307-1392

DKS is also a VAT-registered taxpayer with the Bureau of Internal Revenue (BIR) with TIN/VAT Registration No. 238-763-115-000 and BIR Certificate of Registration No. OCN9RC0000270209, effective June 16, 2005.

On the other hand, the Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with the authority to act as such, including, inter alia, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

During the period covering April 1, 2010 to December 31, 2010, DKS rendered qualifying services to various non-resident foreign affiliates, it was paid acceptable foreign currency which was duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). During the same period, it incurred/paid input taxes on its purchases and/or importations of VATable goods and services. As such, petitioner filed with the BIR, through the Electronic Filing and Payment System (eFPS), its quarterly VAT Returns for the 2nd quarter of CY 2010 on July 21, 2010; for the 3rd quarter of CY 2010 on October 20, 2010; and, for the 4th quarter of CY 2010 on January 25, 2011.

Since the input VAT incurred by DKS for the period covering April 1, 2010 to December 31, 2010 was not applied against its output VAT in the succeeding quarters, DKS filed with the CIR administrative claims for refund or tax credit of its unutilized input VAT attributable to its zero-rated sales for the said given period, more specifically enumerated as follows:

TAXABLE QUARTER OF CY 2010	DATE VAT RETURN WAS FILED	DATE ADMINISTRATIVE CLAIM WAS FILED	AMOUNT CLAIMED FOR REFUND
2nd Quarter	July 21, 2010	January 31, 2012	₱ 41,465,493.51
3rd Quarter	October 20, 2010	May 3, 2012	35,225,151.47
4th Quarter	January 25, 2011	August 1, 2012	43,150,363.14
TOTAL			**₱119,841,008.12**

Afterwards, claiming inaction by the CIR, DKS filed a judicial appeal *via* three (3) separate Petitions for Review with the CTA on June 28, 2012[7], docketed as CTA Case No. 8510; on September 27, 2012[8], docketed as CTA Case No. 8546, and on December 28, 2012[9], which was docketed as CTA Case No. 8595.

On February 13, 2013, DKS then filed a Motion to Consolidate[10] the three (3) cases pending with the CTA First and Third Divisions. Accordingly, finding merit thereon, the court *a quo* issued a Resolution[11] dated March 13, 2013 consolidating CTA Case Nos. 8595 and 8546 with CTA Case No. 8510, the case bearing the lower docket number.

Trial, thereafter, ensued.

On May 8, 2015, the CTA-Division promulgated its Decision[12], partially granting DKS's claim for refund. The *fallo* of said Decision reads as follows:

> "**WHEREFORE**, the Petitions for Review filed on June 28, 2012, September 27, 2012, and December 28, 2012 are **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Deutsche Knowledge Services Pte. Ltd. the reduced amount of **FIFTY-THREE MILLION FIFTY-EIGHT THOUSAND SEVEN HUNDRED SEVENTY-NINE PESOS AND 67/100 (₱53,058,779.67)**, representing its unutilized excess input VAT for the 2nd, 3rd, and 4th quarters of 2010 attributable to its zero-rated receipts for the same period.
>
> **SO ORDERED.**"

Thereafter, on May 29, 2015, DKS filed a Manifestation[13] stating that on May 28, 2015, it filed, through registered mail, a Motion for Partial Reconsideration (Re: Decision dated May 8, 2015). The CIR, on

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[7] Division Docket, Vol. I (CTA Case No. 8510), pp. 6-19
[8] Division Docket (CTA Case No. 8546), pp. 5-21
[9] Division Docket (CTA Case No. 8595), pp. 6-20
[10] *Ibid.*, pp. 47-52
[11] Division Docket, Vol. I (CTA Case No. 8510), p. 349
[12] *Supra* No. 6
[13] Division Docket, Vol. III (CTA Case No. 8510), p.1412-1413

his part, filed on May 29, 2015 a Motion for Partial Reconsideration (Re: Decision Promulgated On May 8, 2015)[14].

On October 13, 2015, the CTA-Division promulgated the assailed Amended Decision[15] which denied the CIR's Motion for Partial Reconsideration for lack of merit and, on the other hand, partially granted DKS's Motion for Partial Reconsideration in this wise, *viz.*:

> "**WHEREFORE**, respondent's *Motion for Partial Reconsideration* is **DENIED** for lack of merit. On the other hand, petitioner's *Motion for Partial Reconsideration* is hereby **PARTIALLY GRANTED**. The May 8, 2015 Decision of the Court is hereby **MODIFIED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Deutsche Knowledge Services Pte. Ltd. the reduced amount of **FIFTY-ONE MILLION SEVEN HUNDRED TWENTY-SIX THOUSAND THREE HUNDRED TEN PESOS and 11/100 (₱51,726,310.11)**, representing its unutilized excess input VAT attributable to its zero-rated sales for the second, third and fourth quarters of calendar year 2010.
>
> **SO ORDERED.**"

Undaunted, both parties elevated the matter to the Court *En Banc via* the instant Petitions for Review. DKS filed its Petition for Review on November 16, 2015 which was docketed as CTA EB No. 1376, while the CIR filed his Petition for Review, through registered mail, on November 23, 2015 and was docketed as CTA EB No. 1378.

On December 15, 2015, the Court *En Banc* issued a Minute Resolution resolving to consolidate EB No. 1378 with EB No. 1376, the case bearing the lower docket number, pursuant to Section 1, Rule 31of the Revised Rules of Court.

In a Resolution[16] dated January 28, 2016, the Court *En Banc* ordered both parties to file their respective Comments on the Petitions for Review within ten (10) days from receipt of said Resolution.

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[14] *Ibid.*, pp. 1435-1441
[15] *Supra* No. 5
[16] CTA *En Banc* Rollo (CTA EB No. 1376), pp. 160-162

Complying therewith, the CIR filed his Comment[17] on February 22, 2016 while DKS failed to file its comment as per Records Verification[18] dated June 2, 2016.

Subsequently, on June 22, 2016, the Court *En Banc* issued a Resolution[19] giving due course to the Petitions for Review and granting the parties a period of thirty (30) days within which to file their respective memoranda.

After asking for several extensions of time, DKS filed, through registered mail, on September 20, 2016 its Memorandum[20] while, the CIR failed to file his as per Records Verification[21] dated September 28, 2016.

Consequently, in a Resolution[22] dated October 10, 2016, the Court *En Banc* deemed the consolidated cases submitted for decision.

In its Petition, DKS respectfully assigns the following errors[23] allegedly committed by the CTA-Division, *viz.:*

> a. The CTA-Division gravely erred in ruling that Petitioner failed to prove its zero-rated sales in the aggregate amount of Php1,047,492,678.80 for the 2nd, 3rd, and 4th quarters of CY 2010;
>
> b. The CTA-Division erred in finding that Petitioner failed to meet the substantiation requirements under Sections 110(A) and 113(B), Tax Code and Sections 4.110-2, 4.110-8 and 4.113-1, Revenue Regulations (RR) No. 16-2005; and
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> c. The CTA-Division erred in finding that Petitioner's input VAT for the 2nd, 3rd, and 4th quarters of CY 2010 should be applied against its output VAT of Php5,787,948.30 for the same period.

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[17] *Ibid.*, pp. 163-166
[18] *Id.*, p. 204
[19] *Id.*, pp. 206-208
[20] *Id.*, pp. 280-311
[21] *Id.*, p. 313
[22] *Ibid.*, pp. 315-317
[23] IV. Assignment of Errors and Summary of Arguments in Support of the Petition for Review, pages 7-8 of the Petition for Review, CTA *En Banc* Rollo (CTA EB No. 1376), p. 14

Conversely, the CIR raised the sole issue[24] of "Whether or not *[DKS]*'s failure to submit complete supporting documents was tantamount to a non-exhaustion of its administrative remedies, which then prevented this Honorable Court from assuming jurisdiction over the Petition for Review filed by *[DKS]*."

After careful scrutiny of the records of the present consolidated cases, *We* find both Petitions for Review to be procedurally flawed thereby preventing the Court *En Banc* from acquiring jurisdiction thereof.

In the present consolidated cases, it is easily discernable from the case records that both parties, after receiving the assailed Amended Decision dated October 13, 2015, opted to immediately file their respective Petitions for Review, instead of first resorting to the filing of a Motion for Reconsideration of the said Amended Decision. A table of the transpiring events is provided hereafter for ease of reference, *to wit:*

	Deutsche Knowledge Services Pte. Ltd.*	Commissioner of Internal Revenue**
Date when Amended Decision was received	October 19, 2015	October 20, 2015
End of 15-day within which to file a Motion for Reconsideration with CTA-Division	November 3, 2015	November 4, 2015
Date when Petition for Review was filed with CTA *En Banc*	November 16, 2015	November 23, 2015

** through its counsel at that time, Salvador Llanillo & Bernardo*
*** through the Office of the Solicitor General*

In relation thereto, Section 2(d) of Rule 4 in relation to Section 1 of Rule 8 of the RRCTA provides as follows:

"RULE 4
JURISDICTION OF THE COURT

SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

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[24] V. Issues, page 5 of the Petition for Review, CTA *En Banc* Rollo (CTA EB No. 1378), p. 14

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(d) Decisions, resolutions or orders **on motions for reconsideration or new trial of the Court in Division** in the exercise of its exclusive original jurisdiction over tax collection cases;" *(Emphasis Ours)*

"RULE 8
PROCEDURE IN CIVIL CASES

SECTION 1. *Review of cases in the Court en banc.* - In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division **must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.**" *(Emphasis Ours)*

Clearly, by failing to timely file a Motion for Reconsideration of the CTA-Division's Amended Decision, the Court *En Banc* cannot acquire jurisdiction over the present consolidated cases. As a matter of fact, not only once has the issue been raised on whether a motion for reconsideration is a condition *sine qua non* before the Court *En Banc* can entertain a Petition for Review of a CTA-Division's Amended Decision.

In resolving the issue, the case of *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue*[25] *("Asiatrust")* is instructive on the matter. The Supreme Court in the said case had the occasion to rule on the propriety of timely filing a motion for reconsideration with the CTA-Division before elevating the case to the Court *En Banc*. The relevant portion of the *Asiatrust* case on the matter is quoted, as follows:

"Section 1, Rule 8 of the Revised Rules of the CTA states:

> SECTION 1. *Review of cases in the Court en banc.* - In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

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[25] G.R. Nos. 201530 & 201680-81, April 19, 2017

> **Thus, in order for the CTA *En Banc* to take cognizance of an appeal via a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word 'must' indicates that the filing of a prior motion is mandatory, and not merely directory.**
>
> The same is true in the case of an amended decision. Section 3, Rule 14 of the same rules defines an amended decision as '[a]ny action modifying or reversing a decision of the court en banc or in Division.' As explained in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*, an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.
>
> In this case, the CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA *En Banc*. Thus, the CTA *En Banc* did not err in denying the CIR's appeal on procedural grounds.
>
> **Due to this procedural lapse, the Amended Decision has attained finality insofar as the CIR is concerned. The CIR, therefore, may no longer question the merits of the case before this Court.** Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR." *(Citations Omitted and Emphases Supplied)*

The foregoing is concise yet clear. There are no other qualifications or conditions set by the High Court in applying the provisions of the RRCTA in cases of Amended Decisions. Section 3[26], Rule 14 of the RRCTA states that any action modifying or reversing a decision of the Division shall be plainly denominated as Amended Decision. There is no need to delve further on whether an entirely new relief was granted or just a mere modification thereof. It is also of no material consequence whether subsequent proceedings had transpired after the CTA-Division has granted the motion for reconsideration of the Decision. If an Amended Decision was subsequently rendered, another motion for reconsideration is required.

[26] **SEC. 3.** *Amended decision.* – Any action modifying or reversing a decision of the Court en banc or in Division shall be denominated as Amended Decision.

As a rule, in statutory construction, if the language is clear and unambiguous, the Court will just simply apply the language used without any qualification, modification or alteration.

Verily, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[27] Once its judgment becomes final, it is binding on all inferior courts, and **hence beyond their power and authority to alter or modify**.[28] Thus, until and unless the Supreme Court modifies or reverses the doctrine laid down in *Asiatrust* case, the said doctrine is binding on all courts, including this Court.

WHEREFORE, the Petitions for Review are hereby **DENIED** for lack of jurisdiction.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[27] Justice J.B.L. Reyes spoke in Albert v. Court of First Instance of Manila [Branch VI], L-26364, May 29, 1968, 23 SCRA 948, 961., at pp. 230-231

[28] Macansantos vs. Fernan, et. al., L-13726, May 31, 1961; Kabigting vs. Acting Director of Prisons, L-15548, Oct. 30, 1962; Jocson vs. Glorioso, L-22686, Jan. 30, 1968

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

(With Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation with the members of the Court *En banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., *Petitioner,*	**CTA EB No. 1376** *(CTA Case Nos. 8510, 8546 and 8595)*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1378** *(CTA Case Nos. 8510, 8546 and 8595)*
- versus -	*Present:* Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, JJ.
DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., *Respondent.*	Promulgated: OCT 18 2017 4:08 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my conformity to the *ponencia* of my esteemed colleague, the Honorable Caesar A. Casanova, denying the Petitions for Review filed by Deutsche Knowledge Services Pte. Ltd. (DKS) in CTA EB No. 1376 and the Commissioner of Internal Revenue (CIR) in CTA EB No. 1378 for lack of jurisdiction, citing *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust case).*[1] I submit that the Court *En Banc* should take cognizance of the Petitions for Review, albeit no prior motions for reconsideration of the Amended Decision were filed by the parties with the Court in Division.

The procedural issue relating to the necessity of filing a motion for reconsideration of an Amended Decision is not novel. On this point, I reiterate the position I have taken in *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation and Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*[2], to wit:

> "A careful perusal of the *Asiatrust case* reveals that the Supreme Court, in declaring that a motion for reconsideration of an amended decision is a condition precedent to an appeal to the Court *En Banc,* is confined to its finding that the **CIR** failed to file a motion for reconsideration of the Court in Division's amended decision, which granted an <u>**entirely new relief**</u> in favor of Asiatrust. The procedural propriety of Asiatrust in filing a motion for reconsideration of the amended decision is not an issue resolved therein.
>
> Interestingly, the *Asiatrust case* cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*[3] *(CE Luzon case)* where the Supreme Court did not declare as fatal the **non-filing <u>by CE Luzon of a motion for reconsideration of the amended decision</u>** which increased the amount of refund granted in favor of CE Luzon from P14 Million to P17 Million. The facts of the case (which are similar to the present case) reveal that CE Luzon directly appealed the Court in Division's amended decision before the Court *En Banc* even as it remained unsatisfied with the increased amount of refund granted in its favor. **Truth to tell, the Supreme Court, <u>despite CE Luzon's non-filing of a motion for reconsideration of the Court in Division's amended decision before filing an appeal with the Court *En Banc*</u>, proceeded to rule on the substantive aspect of CE Luzon's claim**. On the other hand, with regard to the CIR who filed a motion for reconsideration of the Court in Division's amended decision, the Supreme Court ruled that the same does not constitute a second

[1] G.R. Nos. 201530 and 201680-81, April 19, 2017.
[2] CTA EB Nos. 1410 and 1414, July 11, 2017. Also cited in *Tulay sa Pag-unlad, Inc.(TSPI) vs. Commissioner of Internal Revenue,* CTA EB Nos. 1478 and 1528, September 15, 2017.
[3] G.R. Nos. 200841-42, August 26, 2015.

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motion for reconsideration since, **in so far as the CIR is concerned**, the amended decision which **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate, is a different decision which is the proper subject of a motion for reconsideration on the part of the CIR. The pronouncement of the Supreme Court is quoted hereunder:

> 'At the outset, the Court deems it proper to address CE Luzon's claim that the **CIR filed a "second" motion for reconsideration of the CTA Division's January 19, 2010 Amended Decision**. Considering that a second motion for reconsideration is a prohibited pleading and, thus, did not toll the period to file an appeal, CE Luzon maintained that the June 24, 2009 Decision had long become final and executory.
>
> Under Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals, an amended decision is issued when there is any action **modifying or reversing a decision** of the CTA *En Banc* or in Division. Pursuant to these parameters, it is clear that the CIR's motions for partial reconsideration – i.e., (a) motion for partial reconsideration of the June 24, 2009 Decision; and (b) motion for partial reconsideration of the January 19, 2010 Amended Decision – assailed separate and distinct decisions that were rendered by the CTA Division. Notably, its amended decision **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate in the amount of 17,277,938.47. Essentially, it was therefore a different decision and, hence, the proper subject of a motion for reconsideration anew on **the part of the CIR**. Thus, CE Luzon's procedural objection must fail.'

From the foregoing, it is clear that the pronouncement in the *Asiatrust case* should not be construed in a way where the rule against the filing of a second motion for reconsideration is nullified.

Note should be made that Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals ("RRCTA") merely specifies the proper 'denomination' of the Court's action modifying or reversing a previously issued Decision. Thus, the provision reads:

> 'SEC. 3. *Amended Decision*. – Any action modifying or reversing a decision of the Court *en banc* or in Division shall be **denominated as Amended Decision**.'

The fact that an amended decision is eventually issued does not necessarily deviate from its nature, which may in certain instances, be strictly a mere **resolution of a motion for reconsideration**. If the amended decision results from a re-evaluation of the parties' respective positions which the Court originally rejected but which it eventually considered as meritorious (in whole or in part), I submit that a **second** motion for reconsideration of the amended decision is unwarranted. To allow a

second motion for reconsideration raising the same ground which the amended decision already considered would render the proscription against a **second** Motion for Reconsideration meaningless even as it would result to unnecessary delay in the disposition of cases. Section 7, Rule 15 of the RRCTA is clear on this aspect, *viz.*:

> 'SEC. 7. *No second motion for reconsideration or new trial.* - No party shall be allowed to file a second motion for reconsideration or for new trial or decision, final resolution or order.'

Parenthetically, it would be inconsistent to the concept of speedy determination of controversies to allow -- much more -- require a party litigant to rehash, amplify or recycle in a **second** Motion for Reconsideration matters and arguments, which s/he had already presented in Court and which, necessarily have been considered in the amended decision. After all, the movant should have embodied in the **first** motion for reconsideration all supporting arguments relative to the assailed original decision pursuant to Section 3, Rule 15 of the RRCTA.[4]"

Relative to the parties' respective motions for reconsideration and eventual filing of their Petitions for Review with the Court *En Banc*, records disclose the following:

- May 8, 2015 – The Court in Division promulgated a Decision partially granting DKS's Petition for Review, thus ordering the CIR to refund or to issue a tax credit certificate in favor of DKS in the reduced amount of **₱53,058,779.67** representing its unutilized excess input value-added tax (VAT) for the 2nd, 3rd and 4th quarters of 2010 attributable to its zero-rated receipts for the same period.

- May 28, 2015 – DKS posted its Motion for Partial Reconsideration[5] assailing the May 8, 2015 Decision of the Court in Division.

- May 29, 2015 – The CIR filed its Motion for Partial Reconsideration[6] assailing the May 8, 2015 Decision of the Court in Division.

[4] Section 3. Hearing of the motion. – The motion for reconsideration or new trial, as well as the opposition thereto, **shall embody all supporting arguments** and the movant shall set the same for hearing on the next available motion day. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which case the Court shall issue the proper order. (Boldfacing supplied)
[5] CTA Case No. 8510 Docket Vol. 3, pp. 1442-1462.

- October 13, 2015 – The Court in Division rendered the assailed Amended Decision which effectively partially granted the CIR's Motion for Partial Reconsideration and denied DKS's Motion for Partial Reconsideration by further reducing the amount of refund granted to **₱51,726,310.11.**

- November 16, 2015 – DKS filed its Petition for Review with the Court *En Banc* assailing the May 8, 2015 Decision and October 13, 2015 Amended Decision of the Court in Division.

- November 23, 2015 – The CIR filed his Petition for Review with the Court *En Banc* assailing the May 8, 2015 Decision and October 13, 2015 Amended Decision of the Court in Division.

Based on the above-mentioned factual antecedents, I submit that the parties correctly invoked the jurisdiction of the Court *En Banc* by filing the present Petitions for Review to assail the Amended Decision of the Court in Division. The parties clearly observed the condition precedent required under Sec. 1, Rule 8 of RRCTA[7] when they filed their respective Motions for Partial Reconsideration within fifteen (15) days from receipt of the assailed May 8, 2015 Decision.

Considering that the assailed Amended Decision effectively granted (albeit partially) the CIR's Motion, it is procedurally improper for him to file another motion for reconsideration of the assailed Amended Decision.

With respect to DKS, considering that the Amended Decision already considered its arguments in its Motion although it was effectively denied with the further reduction of the refund granted, I submit that a second motion for reconsideration of the Amended Decision is similarly unwarranted.

A motion for reconsideration by the CIR or DKS assailing the Court in Division's Amended Decision would be in the nature of a second **motion for reconsideration, which as afore-discussed, is prohibited under Section 7, Rule 15 of the RRCTA**.

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[6] CTA Case No. 8510 Docket Vol. 3, pp.1435-1441.
[7] Section 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (Sec. 1, Rule 8 of RRCTA)

From the foregoing, I submit that the assailed Amended Decision has not attained finality insofar as both parties are concerned. It is, therefore, in this light that the Petitions for Review should not be dismissed outright.

At any rate, even if the Court *En Banc* takes cognizance of the CIR's Petition, considering that the arguments raised therein are mere rehash of the arguments already considered, discussed and passed upon by the Court in Division's Decision and Amended Decision, there is no compelling reason for the Court *En Banc* to modify or reverse the same. The Petition must perforce be denied.

With respect to DKS's Petition, I register my assent to the Court in Division's ruling that *"[t]o be considered as a non-resident foreign corporation doing business outside of the Philippines, each entity must be supported at the very least by the Certification of Non-Registration of Corporation/Partnership duly issued by the [Securities and Exchange Commission (SEC)]* ***and*** *either the articles/certificate of foreign incorporation/association or printed screenshots of US SEC (of the official regulatory of a particular jurisdiction) website showing the state/province/country where the entity was organized or* ***any other equivalent document.****"*[8]

Consistent with the foregoing ruling, I submit that DKS's sale of service to its clients whose identities are supported by **SEC Certifications of Non-Registration of Company <u>and</u> accompanied by either an Intragroup Service Agreement or foreign business registration documents**, proving that the services were rendered to non-resident foreign corporations doing business outside the Philippines, also qualify for zero-rating.

After verifying the list of clients[9] in DKS's Petition, the following entities may be considered as non-resident foreign corporation doing business outside the Philippines as evidenced by the exhibits listed across their names:

Company Name	**Proof of being a non-resident foreign corporation doing business in the Philippines**	
	SEC Certification of Non-Registration	**Intragroup Service Agreement**
DB International (Asia) Limited	Exhibit III-23	Exhibits GGG-330 to 332
DB Trust Company Limited Japan	Exhibit III-72	Exhibits GGG-327 to 329
Deutsche Asia Pacific Holdings Pte Ltd	Exhibit III-49	Exhibits GGG-16 to 18

[8] Amended Decision, CTA EB No. 1376 Docket, p.147.
[9] CTA EB No. 1376 Docket, pp.17-19.

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Deutsche Bank (Malaysia) Berhad	Exhibit III-58	Exhibits GGG-75 to 86, GGG-90 to 94
Deutsche Bank Aktiengesellschaft Filiale Bangkok	Exhibit III-82	Exhibits GGG-221 to 225
Deutsche Bank Aktiengesellschaft Filiale Mumbai	Exhibit III-80	Exhibits GGG-226 to 229
Deutsche Bank Aktiengesellschaft Filiale Seoul	Exhibits III-43, III-77	Exhibits GGG-252 to 257
Deutsche Bank Aktiengesellschaft Filiale Taipei	Exhibit III-71	Exhibits GGG-87 to 89
Deutsche Bank Luxembourg S.A.	Exhibit III-12	Exhibits GGG-271 to 275
Global Markets Center Private Limited	Exhibit III-61	Exhibits GGG-339 to 341
Rreef Management GMBH	Exhibit III-25	Exhibits GGG-153 to 157

Accordingly, DKS's sale of service to the above-listed entities must also be considered as zero-rated sales.

All told, I VOTE to DENY the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1378 for lack of merit; and PARTIALLY GRANT the Petition for Review filed by Deutsche Knowledge Services Pte. Ltd. in CTA EB No. 1376 thereby AFFIRMING the assailed Decision and Amended Decision, subject to its remand to the Court in Division for the determination of input VAT attributable to the sale of services of DKS to its clients whose identities are supported by their respective SEC Certifications of Non-Registration of Company and Intragroup Service Agreements or foreign business registration documents, and provided further that said sale of services are substantiated with official receipts, and duly paid for in foreign currency and accounted for in accordance with the rules of the *Bangko Sentral ng Pilipinas*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DEUTSCHE KNOWLEDGE SERVICES PTE, LTD.,
Petitioner,

CTA EB NO. 1376
(CTA Case Nos. 8510, 8546 & 8595)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x- -x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1378
(CTA Case Nos. 8510, 8546 & 8595)

- versus -

DEUTSCHE KNOWLEDGE SERVICES PTE, LTD.,
Respondent.

Members:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
OCT 18 2017 4:08 p.m.

x- -x

DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect, I dissent from the majority decision which ordered the outright dismissal the instant Petition for Review for failure of the parties to seek any reconsideration of the Amended Decision dated October 13, 2015 (assailed Amended Decision). For the orderly administration of justice, I maintain my position that the ruling laid down by the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[1] should only be applied in instances of similar factual milieu. This is obviously not the case here.

On this score, I adopt my Concurring Opinion in *Philam Properties Corporation V. Commissioner of Internal Revenue*[2], which expound on why *Asiatrust* should not be applied in each and every case, as dictated by sound procedural rules. The relevant portions are quoted below:

> Before the Court *En Banc* could take cognizance of a Petition for Review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned division, following Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals. This has always been the rule, and it still is.
>
> Said section provides, to wit:
>
> **"RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> > **SECTION 1.** *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (n)"
>
> On July 13, 2015, the Third Division (court in Division) promulgated a Decision denying Philam's claim for refund or issuance of a tax credit certificate for insufficiency of evidence...
>
> xxx xxx xxx
>
> On August 04, 2015, Philam filed a Motion for Reconsideration alleging that its claim was fully substantiated.
>
> On December 03, 2015, the court in Division issued an Amended Decision partially granting Philam's Motion for Reconsideration and ordering the Commissioner of Internal Revenue (CIR) to issue a tax credit certificate in the amount of Php612,287.61.

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1 G.R. Nos. 201530 & 201680-81, April 19, 2017.
2 CTA EB NO. 1406, July 07, 2017.

Thereafter, the CIR filed a Motion for Reconsideration on the Amended Decision, which was denied by the court in Division in a Resolution. Subsequently, Philam filed the instant Petition with this Court.

Hence, as borne by the records of the case, it is very clear that Philam already sought prior reconsideration with the court in Division before it filed a Petition for Review with the Court *En Banc*. The mandatory requirement under Section 1 of Rule 8 of the Revised Rules of the Court of Tax Appeals was already complied with.

I am not unaware of the recent pronouncement of the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*. However, I humbly stress and emphasize that the factual milieu of the said case differs significantly from the case at bar. *Asiatrust* is not on all fours with the instant case and should not be applied to the same.

At first glance, the facts of *Asiatrust* and this case may seem similar for in both cases, an amended decision was promulgated by the court in division partially granting the motion for reconsideration to the original decision. A perusal of the case however discloses that prior to the issuance of the amended decision, the court set a hearing for the presentation of the originals of the documents attached to Asiatrust's motion for reconsideration, documentary exhibits were presented and marked, a witness was recalled, and a supplemental formal offer of evidence was filed. Otherwise stated, a formal hearing was held which became the foundation of the amended decision in *Asiatrust*. Therefore, it is only proper that the Commissioner of Internal Revenue in *Asiatrust* file a motion for reconsideration to the amended decision as to the findings made by the Court in division during the hearing.

In contrast with the case at bar, the only basis for the court in Division's Amended Decision dated December 03, 2015 was Philam's Motion for Reconsideration dated August 04, 2015. No hearing was set nor additional evidence presented.

Moreover, to insist that Philam file a motion for reconsideration of the Amended Decision would only force Philam to reiterate its argument in its Motion for Reconsideration to the original decision, *i.e.,* that its claim for refund was fully substantiated, which was already passed upon and resolved by the court in Division in its Amended Decision.

Otherwise stated, to apply the rule in *Asiatrust* to include all situations involving issuance of an Amended Decision despite the fact that the issues to be raised in the "second motion for reconsideration" were already included in the motion for reconsideration filed and passed upon by the court when it promulgated the Amended Decision would set a dangerous and mischievous precedent. A second motion for reconsideration which contains mere iterations and reiterations of the same points and arguments over and over again becomes, in effect, a mere dilatory strategy and consequently nothing more than pro forma.

To reiterate, the use of precedents should not be mechanical. Application of a particular doctrine is appropriate only in cases involving similar facts. When the facts vary, one should analyze and re-examine if the same doctrine would still apply. As aptly put by the Supreme Court in *Philippine Carpet Manufacturing v. Ignacio B. Tagyamon*:

> "Under the doctrine of stare decisis, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same, even though the parties may be different. <u>Where the facts are essentially different, however, stare decisis does not apply, for a perfectly sound principle as applied to one set of facts might be entirely inappropriate when a factual variant is introduced.</u> (Emphasis supplied)"

Similar to *Philam*, both parties timely filed a Motion Partial for Reconsideration to the Decision dated May 8, 2015 (assailed Decision). On May 28, 2015, Deutsche Knowledge Services Pte. Ltd. filed its Motion Partial for Reconsideration *via* registered mail.[3] On May 29, 2015, the Commissioner of Internal Revenue filed his Motion Partial for Reconsideration.[4] Second, the only basis for the court in Division's assailed Amended Decision was Respondent's Motion for Partial Reconsideration and Petitioner's Motion Partial for Reconsideration. Lastly, no hearing was set nor additional evidence presented for the resolution of the parties' motions for reconsideration. Thus, I am of the humble opinion that *Asiatrust* does not apply in the present case, hence, the outright dismissal of the instant Petition for Review is unwarranted.

In view hereof, I vote that the Petitions for Review be given due course.

Ma. Belen S.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[3] DKS received a copy of the Decision on May 13, 2015.
[4] The CIR received a copy of the Decision on May 14, 2015.