Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

THE CITY OF MAKATI represented in this case by its City Mayor, the HON. JEJOMAR C. BINAY, the OIC City Treasurer, NELIA A. BARLIS, and the OIC of the Business Tax Division, FELITO A. MANRIQUE,
Petitioner,

-versus-

TRANS-ASIA POWER GENERATION CORPORATION,
Respondent.

CTA EB NO. 1086
(CTA AC Case No. 87)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

Promulgated:
AUG 1 8 2015
10:52 a.m.

x---x

RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution is petitioner's "Motion for Partial Reconsideration (*of the Decision dated 21 January 2015*)"[1] with respondent's Comment[2] thereto filed on March 4, 2015 and May 21, 2015, respectively. The dispositive portion of the assailed Decision[3] reads:

> "**WHEREFORE,** the petition for review is hereby **PARTLY GRANTED**. The Decision of the Special First Division of this Court in CTA AC Case No. 87 dated July 10, 2013 and its Resolution dated October 23, 2013 are hereby **AFFIRMED WITH MODIFICATION**. We **DELETE** the award of attorney's fees in favor of respondent.
>
> **SO ORDERED.**"[4]

In its motion, petitioner reiterates its argument that based on the documentary evidence presented, respondent should be classified as a contractor pursuant to Section

[1] *En Banc* Docket, pp. 217-224.
[2] *Id.*, at 228-235.
[3] *Id.*, at 198-211.
[4] *Id.*, at 210.

131(h) of the Local Government Code of 1991 and Section 3A.01(q) of the Makati Revenue Code. Petitioner further argues that contrary to the findings of this Court, respondent is actually engaged in the installation of electricity, and even management and operation of power plants as attested by the same documentary evidence presented.

Respondent, on the other hand, counter-argues that the official documents relied upon by the petitioner do not prove that respondent should be classified as a contractor or "Services-Other Co," for local business tax purposes. On the contrary, respondent emphasized that it is engaged in the manufacture of electricity and its consequent sale thereof based on the definition of a "Manufacturer" under Section 131(o) of the Local Government Code and Section 3A.01(ll) of the Makati Revenue Code. Respondent re-states that it uses bunker fuel as raw material for its power generation plant and converts this fuel by mechanical and chemical process to electricity. Thus, in generating electricity, respondent transforms the chemical energy in fuel into electrical energy. Respondent further argues that it only manages, operates, maintains and repairs its own power plant as Holcim Philippines, Inc. (Holcim) does not have its own power plant.

Petitioner's motion is bereft of merit.

A careful examination of the instant Motion for Partial Reconsideration readily reveals that the issues and arguments submitted by petitioner had already been sufficiently passed upon and adequately discussed in the assailed Decision dated January 21, 2015.

As we have underscored in the assailed Decision, respondent's nature of business falls within the category of "manufacturer/producer" and not "contractor" of electricity pursuant to Section 131 (o) of the Local Government Code of 1991 and Section 3A.01 (ll) of the Makati Revenue Code. To reiterate:

> "It was never disputed that respondent buys bunker fuel as its chief raw material and converts it through mechanical and chemical processes to

electricity. Respondent subsequently sells this electricity to Hi Cement by virtue of the ESA. It is also erroneous to say Hi Cement owns the power plant. While Hi Cement initially owned the property where the Power Plant is located, it was later sold to respondent as provided under Article 3.1 of the ESA. In fine, respondent owns the Power Plant where the electricity is generated. As the owner of the Power Plant, respondent needs to manage, operate, maintain, and repair its own Power Plant.

The Court as well agrees with respondent that the additional undertakings under the ESA are merely ancillary to and in aid of its primary function as a producer of electricity, and are not even services rendered to Hi Cement, but rather are additional undertakings to ensure the safe and continuous delivery of the electricity sold.

Anent the Certificate of Registration issued by the BOI, respondent was correct in saying that although the said document classified respondent under the category of an 'Infrastructure & Service-Oriented Industries', the said classification is not definitive of its real business purpose. In fact, there is nothing in the document that explains the classification. It merely enumerates the documents for submission by respondent."[5]

In view of the foregoing, we see no cogent reason to compel a modification or reversal of the said Decision.

WHEREFORE premises considered, the motion is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

---

[5] *Id.*, at 208-209, *citing* the Decision of the Special First Division of the Court of Tax Appeals dated July 10, 2013, *En Banc* Docket, pp. 103-104.

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice