REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

WATERFRONT PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1070
(CTA Case No. 8024)

Present:
Del Rosario, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:

DEC 04 2014

1:59 p.m.

x---x

DECISION

CASTAÑEDA, JR., *J.* :

Before the CTA *en banc* is a petition for review, which seeks to modify/reverse the Amended Decision dated April 24, 2013 and Resolution dated September 13, 2013 rendered by the CTA Special First Division[1] in the case entitled *"Waterfront Philippines, Inc. v. Commissioner of Internal Revenue"* docketed as CTA Case No. 8024 with respect to the Value Added Tax (VAT) assessment and to reinstate the CTA First Division Decision[2] dated November 13, 2012 that cancelled the VAT and Compromise Penalty

[1] *Rollo*, pp. 58-66 (Amended Decision) & pp. 78-84 (Resolution); Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Esperanza R. Fabon-Victorino.
[2] *Id.*, pp. 30-48; Penned by the then Presiding Justice Ernesto D. Acosta (compulsorily retired on December 21, 2012) and concurred in by Associate Justices Erlinda P. Uy and Esperanza R. Fabon-Victorino.

assessments, and retention of the deficiency amended Expanded Withholding Tax (EWT) for taxable year 2006.

The dispositive portion of the assailed Amended Decision states:

> **WHEREFORE**, premises considered, respondent's Motion for Reconsideration of the Decision dated November 20, 2012 is hereby **GRANTED**.
>
> Accordingly, the dispositive portion of the said Decision of this Court is hereby modified to read as follows:
>
> > "**WHEREFORE**, premises considered, the petitioner's prayer for the cancellation of the assessment covering deficiency amended expanded withholding tax for taxable year 2006 are hereby **DENIED**.
> >
> > Accordingly, petitioner is hereby **ORDERED** to pay respondent deficiency amended expanded withholding tax for the taxable year 2006 in the amount of ₱873,448.22, inclusive of 25% surcharge and 20% deficiency interest imposed pursuant to Section 248 A(3) and 249(B) of the NIRC of 1997.
> >
> > Likewise, petitioner is **ORDERED** to pay delinquency interest at the rate of 20% per annum on the total deficiency taxes of ₱873,448.22 from December 15, 2009 until full payment thereof pursuant to Section 249(C) (3) of the 1997 NIRC.
> >
> > In addition, as to petitioner's prayer for the cancellation of the compromise penalty for the unauthorized use of computerized accounting and for non-submission of the alpha list of payees, this Court finds it meritorious to cancel the same. Consequently, respondent is hereby **ORDERED** to **CANCEL** the assessment on the compromise penalty for the unauthorized use of computerized accounting system and for non-submission of alpha list of payees.
> >
> > **FINALLY**, anent the deficiency VAT assessment, petitioner is hereby **ORDERED** to pay respondent deficiency VAT tax for the same taxable

> year in the amount of ₱1,409,101.74, plus 25% surcharge and 20% deficiency interest imposed under Section 248 A(3) and 249, respectively, of the NIRC of 1997.
>
> **SO ORDERED.**"
>
> **SO ORDERED.**[3]

The dispositive portion of the assailed Resolution reads:

> **WHEREFORE**, premises considered, petitioner's *Motion for Reconsideration* of the Amended Decision dated April 24, 2013 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[4]

THE FACTS

As found by the CTA First Division from the Joint Stipulation of Facts[5] of the parties and as borne by the records of the case, the following are the pertinent facts of this case:[6]

> Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with principal office of IPT Building, Pre-Departure Area, MCIA, Cebu City.
>
> Respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including among others, the power to authorize the examination of taxpayer's books of accounts, to issue and decide deficiency assessment of internal revenue taxes.
>
> On November 8, 2007, the Bureau of Internal Revenue issued Letter of Authority No. LOA 2007 00015191 for the investigation of petitioner's business operations and books of accounts for calendar year 2006.

---

[3] *Rollo*, pp. 64-65.
[4] *Id.*, p. 84.
[5] Division Docket, pp. 135-138.
[6] *Rollo*, pp. 31-34.

On January 14, 2009, the Formal Letter of Demand issued by BIR Revenue Region No. 13 – Cebu City was received by the petitioner. In turn, petitioner filed its formal written protest with the BIR on February 10, 2009.

In its letters dated February 18 and April 24, 2009, the BIR informed petitioner that in response to its formal written protest of February 9, 2009, the docket of the case was referred back to BIR Revenue District Office No. 80 – Mandaue City for reinvestigation, and submission of supporting documents within 60 days from the filing of the formal written protest.

The BIR issued Tax Verification Notice No. TVN-2003-00110949 dated July 7, 2009 for reinvestigation of petitioner's 2006 internal revenue taxes; and in response, petitioner submitted additional supporting documents in its letter dated July 23, 2009 that was filed with BIR on July 24, 2009. Thereafter, the BIR released its Post Reporting Notice that was received by the petitioner on September 25, 2009.

Respondent issued its Final Decision on Disputed Assessment (FDDA) on December 8, 2009 directing petitioner to pay the assessment or to appeal [the] final decision to the Court of Tax Appeals within 30 days of the receipt of the decision. The respondent seeks to collect deficiency assessments as follows:

1. Value-Added Tax
(old Assessment No. 80-vat-13-2006-2008-12-223):

Interest Income		11,907,902.00
Output tax due:		
((P11,907,902.00/12)* 10%)	99,232.52[7]	
((P11,907,902.00*11/12)*12%)	1,309,869.22	1,409,101.74
Add: 25% Surcharge		352, 275.44
20% Interest (01/25/07-01/10/09)		551,115.33
Compromise Penalty		25,000.00
Total deficiency tax		**P2,337,492.51**

The CIR made no adjustment on the deficiency value-added taxes due on interest income derived from loans granted to Metro Alliance Holdings and Equities Corporation

[7] The Decision stated the amount of P9,232.52 (typographical error).

(MAHEC) and Wellex Group, Inc. (TWGI) as per assessment No.80-vat-13-2006-2008-12-223 since no BIR ruling exempting said income from VAT was specifically issued in favor of the petitioner. The respondent stated that pursuant to Revenue Regulation 16-2005, any person, who in the course of trade or business, sells or barters, exchanges or leases goods or properties, or renders services, and any person who imports goods, shall be liable to value-added tax imposed in Section 106-108 of the Tax Code.

2. Expanded Withholding Tax
(Assessment No. 80-we-13-2006-2008-12-222/amended):

Management Fee	4,060,000.00
Multiply by withholding tax rate	15%
Expanded withholding tax due	609,000.00
Less: Remittances	58,000.00
Basic Deficiency tax	551,000.00
Add: 20% Interest (01/11/07-12/15/09)	322,448.22
Compromise Penalty for non-submission of Alpha list of payees	25,000.00
Total deficiency tax	**P 898,448.22**

Reinvestigation of the case revealed that management fee of P4,060,000.00 was recorded in the books as part of Trade and Other Payables, however, only P58,000.00 was withheld and remitted to the BIR. On the other hand, no alpha list of payees whose income are subject to expanded withholding tax was submitted, hence, a compromise penalty was imposed pursuant to Revenue Memorandum Order No. 19-2007 which resulted to a deficiency expanded withholding tax of P898,448.22.

3. Compromise Penalty
(Assessment No. 80-it-13-2006-2008-12-222)
(for unauthorized use of computerized accounting system)

Compromise Penalty	**P25,000.00**

Petitioner received the BIR Final Decision on Disputed Assessment dated December 8, 2009 on December 18, 2009 xxx xxx xxx.

The Petitioner filed the Petition for Review on January 15, 2010 xxx xxx xxx.

On November 13, 2012, the CTA First Division promulgated its Decision ordering the cancellation of the assessment on the deficiency VAT for taxable year 2006 and the assessment on the compromise penalty for the unauthorized use of computerized accounting system and for non-submission of alpha list of payees. However, the assessment covering deficiency amended expanded withholding tax for taxable year 2006 was upheld. The dispositive portion of said Decision reads:

> **WHEREFORE,** premises considered, the petitioner's prayer for the cancellation of the assessment covering deficiency amended expanded withholding tax for taxable year 2006 are hereby **DENIED.**
>
> Accordingly, petitioner is hereby **ORDERED** to pay respondent deficiency amended expanded withholding tax for the taxable year 2006 in the amount of P873,448.22, inclusive of 25% surcharge and 20% deficiency interest imposed pursuant to Section 248 A(3) and 249(B) of the NIRC of 1997.
>
> Likewise, petitioner is **ORDERED** to pay delinquency interest at the rate of 20% per annum on the total deficiency taxes of P873,448.22 from December 15, 2009 until full payment thereof pursuant to Section 249(C)(3) of the 1997 NIRC.
>
> **FINALLY,** as to the petitioner's prayer for the cancellation of the assessment on the deficiency value added tax for taxable year 2006 and the compromise penalty for the unauthorized use of computerized accounting system and for non-submission of alpha list of payees, this Court finds it meritorious to cancel the same. Consequently, respondent is hereby **ORDERED** to **CANCEL** the assessment on the deficiency value added tax for taxable year 2006 and the assessment on the compromise penalty for the unauthorized use of computerized accounting system and for non-submission of alpha list of payees.
>
> **SO ORDERED.**[8]

On December 4, 2012, respondent filed a Motion for Reconsideration with respect to the cancellation of the deficiency VAT assessment for taxable year 2006.[9]

[8] *Rollo*, pp. 47-48.
[9] Division Docket, pp. 482-489.

On December 11, 2012, petitioner filed a Motion for Extension of Time to File an Appeal to Court Sitting *en banc*. This was docketed as CTA EB No. 966.[10] In a CTA *en banc* Minute Resolution dated December 13, 2012, petitioner was granted a final and non-extendible period of fifteen (15) days from December 12, 2012 or until December 27, 2012 within which to file its Petition for Review.[11]

On January 14, 2013, respondent's Motion for Reconsideration was submitted for resolution without the comment from petitioner as per Records Verification dated January 9, 2013.[12]

On February 19, 2013, the Court *en banc* considered CTA EB No. 966 as abandoned because no Petition for Review was filed despite the lapse of the extended period (until December 27, 2012) granted in the December 13, 2012 Resolution, and consequently the said case was closed and terminated.[13]

On April 24, 2013, the assailed Amended Decision was promulgated. Respondent's Motion for Reconsideration of the Decision dated November 13, 2012 was granted. The dispositive portion of the said Decision was modified. Petitioner was ordered to pay respondent an additional deficiency VAT assessment for taxable year 2006 in the amount of ₱1,409, 101.74, plus 25% surcharge and 20% deficiency interest imposed under Section 248 A(3) and 249, respectively, of the NIRC of 1997.

Petitioner sought reconsideration of the assailed Amended Decision on May 20, 2013.

On July 25, 2013, petitioner's Motion for Reconsideration filed on May 20, 2013 was submitted for resolution without comment from respondent despite notice, per Records Verification dated July 19, 2013.

On September 13, 2013, the CTA Special First Division denied petitioner's Motion for Reconsideration of the Amended Decision dated April 24, 2013 for lack of merit.

On October 2, 2013, the Court *en banc* granted petitioner's "Motion for Extension of Time to File Petition for Review to the Court En Banc". Petitioner timely filed its Petition for Review on October 21, 2013.[14] Jr

---

[10] Division Docket, p. 492.
[11] *Id.*, p. 494.
[12] *Id.*, p. 496.
[13] *Id.*, p. 498.
[14] The last day to file the petition is on October 19, 2013 which fell on a Saturday.

On December 9, 2013, the Court *en banc* ordered respondent to file Comment. Respondent filed Comment/Opposition (Re: Petition for Review) on January 16, 2014.

On February 10, 2014, the Court *en banc* ordered the parties to file their respective Memorandum.

On February 20, 2014, the Court *en banc* noted respondent's Manifestation stating that she is adopting the arguments raised in the Comment/Opposition to Petition for Review filed on January 16, 2014 as her Memorandum in the above-entitled case.

Per Records Verification dated April 8, 2014, petitioner failed to file its Memorandum .

On June 4, 2014, this case was submitted for decision.

Hence, this decision.

ISSUE

WHETHER PETITIONER IS SUBJECT TO VAT ASSESSMENT ON INTEREST INCOME FROM CASH ADVANCES RECEIVED FROM RELATED PARTIES FOR THE YEAR 2006.

THIS COURT'S RULING

The petition is denied.

This petition involves the VAT assessment for taxable year 2006 on interest income derived from loans granted to related parties, Metro Alliance Holdings and Equities Corporation (MAHEC) and Wellex Group, Inc. (TWGI).

It is noteworthy to mention that assessments are *prima facie* presumed correct and made in good faith. It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise.[15] ℊℯ

---

[15] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. Nos. 104151 & 105563, March 10, 1995, 242 SCRA 289, 313.

Petitioner alleges that in the ordinary course of its trade and business, it is not engaged in "extending cash advances" to its related parties, thus, the "interest derived therefrom" is not subject to VAT. Petitioner argues that this position is supported by the CTA Decision in the 2012 case of *Thomas G. Ongtenco v. Commissioner of Internal Revenue*[16] and the Supreme Court case of *Commissioner of Internal Revenue v. Magsaysay Lines, Inc., et al.*[17]

It contends that Sections 105 and 108 of NIRC should be interpreted to mean the performance or rendition of service "in the regular conduct of its business" that is within the parameters of its licensed business in the primary purpose of its Articles of Incorporation as approved by the Securities and Exchange Commission. Petitioner argues that while the focus of the First Division Decision is in relation to the issue of petitioner being a lending investor, two definite findings of facts was established by the Decision that was not contested or controverted in the Amended Decision:

(a) That an analysis of the primary purpose in petitioner's Amended Articles of Incorporation established that advances extended to its "related parties" was not done in the ordinary course of its trade or business,[18] and

(b) The purpose of the cash advance extended by petitioner is merely to provide financial support to its affiliates and not to generate income.[19]

Respondent counters that petitioner was assessed for deficiency VAT not as a lending investor but for the interest income realized from the interest-bearing loans and collateral free advances extended to related parties. Respondent argues that in the ordinary course of its operations, petitioner extends and obtains cash advances and loans to/from related parties for working capital purposes as well as to finance the construction and operation of its hotel projects in furtherance of its primary purpose as stated in its Articles of Incorporation.

Petitioner's contentions are untenable.

Pertinent to this case are Sections 105 and 108 of the National Internal Revenue Code of 1997 (NIRC), as amended, which state: Jr

---

[16] CTA Case No. 8190, December 12, 2012.
[17] G.R. No.146984, July 28, 2006, 497 SCRA 63.
[18] Decision, p.14; *Rollo*, p. 43.
[19] *Id.*

"SEC. 105. *Persons Liable.*— Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase *'in the course of trade or business'* means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business."

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

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 1/2%).

> The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. . . . ."

Sec.105 of the NIRC explicitly provides who are the persons liable to VAT imposed in Sections 106 to 108[20] of the NIRC, namely: (1) any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and (2) any person who imports goods. On the other hand, Sec. 108 of the NIRC pertains to VAT on sale of services and use or lease of properties. It states therein the VAT rate and base, and the meaning of the phrase "sale or exchange of services".

The law defines the phrase "in the course of trade or business" as the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity. Clearly, the determination of whether the transaction is "in the course of

---

[20] SEC. 106. *Value- Added Tax on Sale of Goods or Properties.*; SEC. 107. *Value-Added Tax on Importation of Goods.*; SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.*

trade or business" is crucial in the imposition of VAT in the sale, barter, exchange, lease of goods or properties, and performance of service.

Transactions incidental to the regular conduct or pursuit of a commercial or an economic activity are also considered "in the course of trade or business". The word "incidental" means depending upon or appertaining to something else primary; something necessary, appertaining to, or depending upon another, which is termed the principal; something incidental to the main purpose (Black's Law Dictionary, 6th ed. p. 762).

In the case of *Lapanday Foods Corporation v. Commissioner of Internal Revenue*[21] , CTA *en banc* ruled that "petitioner's income from loans extended to its affiliates is subject to VAT. Whether petitioner has realized profit or not is insignificant, as long as the petitioner has provided financial assistance or services for a fee, remuneration or consideration, such service rendered is subject to VAT." This decision is based on the doctrine laid down in *Commissioner of Internal Revenue v. Court of Appeals and Commonwealth Management and Services Corporation*[22] (*COMASERCO* case) wherein the Supreme Court (SC) ruled that "[a]s long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT." Pertinent portions of the *COMASERCO* case state:

> "Section 108 of the National Internal Revenue Code of 1997 defines the phrase 'sale of services' as the 'performance of all kinds of services for others for a fee, remuneration or consideration.' It includes 'the supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking or project.'
>
> On February 5, 1998, the Commissioner of Internal Revenue issued BIR Ruling No. 010-98 emphasizing that a domestic corporation that provided technical, research, management and technical assistance to its affiliated companies and received payments on a reimbursement-of-cost basis, without any intention of realizing profit, was subject to VAT on services rendered. In fact, even if such corporation was organized without any intention of realizing profit, any income or profit generated by the entity in the conduct of its activities was subject to income tax.

---

[21] CTA EB 367 (CTA Case No. 7097), January 29, 2009.
[22] G.R. No. 125355, March 30, 2000, 329 SCRA 237.

> Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. **As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.**" *(Emphasis Supplied).*

In a more recent case entitled *Diaz, et al. v. Secretary of Finance*[23], the SC *en banc* concluded that "every activity that can be imagined as a form of 'service' rendered for a fee should be deemed included unless some provision of law especially excludes it." SC applied the definition of "sale or exchange of services" in Sec. 108 of the NIRC, as amended, and ruled that the law imposes VAT on "all kinds of services" rendered in the Philippines for a fee, including those specified in the list. Pertinent portions of the *Diaz* case state:

> "The relevant law in this case is Section 108 of the NIRC, as amended. VAT is levied, assessed, and collected, according to Section 108, on the gross receipts derived from the sale or exchange of services as well as from the use or lease of properties. The third paragraph of Section 108 defines 'sale or exchange of services' as follows:
>
> > 'The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services;lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines;

---

[23] G.R. No. 193007, July 19, 2011, 654 SCRA 96.

> sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties.'[24]

> It is plain from the above that the law imposes VAT on 'all kinds of services' rendered in the Philippines for a fee, including those specified in the list. The enumeration of affected services is not exclusive.[25] **By qualifying 'services' with the words 'all kinds,' Congress has given the term 'services' an all-encompassing meaning.** The listing of specific services are intended to illustrate how pervasive and broad is the VAT's reach rather than establish concrete limits to its application. **Thus, every activity that can be imagined as a form of 'service' rendered for a fee should be deemed included unless some provision of law especially excludes it."** *(Emphasis Supplied).*

Applying the cases of *COMASERCO* and *Diaz*, indeed, extending cash advances with interest to related parties is a form of service for a fee. The conclusion of the Special First Division as stated in the April 24, 2013 Amended Decision, therefore, is correct, as follows:

> "Thus, for the imposition of the VAT on the sale of service, the issue of whether or not petitioner is a lending investor would not be material, since being a lending investor is merely one of those specified in the list stated in the above-quoted Section 108. Such being the case, so long as it can be found that petitioner performed a certain service for another for a fee, remuneration or consideration, the same is subject to VAT.

> In the present case, it is undisputed that petitioner extended cash advances with interest to its affiliates. This act is clearly a performance of service for a fee, remuneration or consideration within the purview of the above-quoted

---

[24] Underscoring supplied in the decision was removed .
[25] *Commissioner of Internal Revenue v. SM Primeholdings, Inc.* , G.R. No. 183505, February 26, 2010, 613 SCRA 774, 788.

provisions of the NIRC of 1997, the fee, remuneration or consideration being the interest received by petitioner. Thus, the same should certainly be subject to VAT."[26]

Petitioner also failed to point to "some provision of law" which excludes extending cash advances with interest to related parties to the definition of "services", thus, We agree with the finding of the Special First Division as stated in the September 13, 2013 Resolution, as follows:

"It must be emphasized that petitioner failed to point to '*some provision of law*', which '*especially excludes*' extending cash advances with interest to its affiliates to the definition of '*services*'.

As a corollary, the term '*service*' is ordinarily defined as '*help*', or '*benefit*'. Thus, petitioner's purpose of extending said cash advances, i.e., '*to keep its affiliates financially afloat*' being in the form of a help or benefit, bolsters the finding that such act is within the ambit of the term '*service*'.[27]

Moreover, petitioner's reliance in citing the CTA case *Thomas G. Ongtenco v. Commissioner of Internal Revenue*[28] and the SC case *Commissioner of Internal Revenue v. Magsaysay Lines, Inc., et al.*[29] is also misplaced. The facts and circumstances in those cases are different from this instant case. In *Ongtenco* case, the interest income received by Ongtenco from lending money to Intertrade Credit Corporation (ICC) where he is a director and a stockholder cannot be considered as an act of lending in the course of his trade or business (of selling motorcycle parts and accessories). In *Magsaysay Lines* case, the sale of the vessels of National Development Company (NDC) to Magsaysay Lines, Inc. was involuntary and made pursuant to the declared policy of Government for privatization that could no longer be repeated or carried on with regularity. In the *Ongtenco* case and the *Magsaysay Lines* case, the transactions are isolated and not made in the course of trade or business. In the instant case, however, although the transaction is isolated, still it is considered incidental to the regular course of business. A careful reading of petitioner's primary purpose stated in the Amended Articles of Incorporation[30] reveals that there is a "catch-all" purpose provided therein where the corporation is authorized "to do any and all things necessary, suitable, convenient, proper or incidental to the accomplishment of the above purposes", as follows: *gr*

[26] *Rollo*, pp. 63-64.
[27] *Rollo*, p. 83.
[28] CTA Case No. 8190, December 12, 2012, affirmed by the CTA *en banc* in CTA EB No. 995, June 30, 2014.
[29] G.R. No.146984, July 28, 2006, 497 SCRA 63.
[30] Exhibit "L-1", Division Docket, p. 310.

> "To carry on the business of an investment holding company and for that purpose either in the name of the said corporation or in the name of any other corporation in which it shall have an equity interest, to receive, purchase or otherwise acquire an interest in, hold, own, pledge, mortgage, assign, dispose and generally deal in all kinds of securities including but not limited to shares of stock of corporation which shall include but shall not be limited to financial services institutions such as banking, insurance, stockbroking, leasing, hire, purchase, and other forms of financial services as are found in modern financial market; to acquire and hold real property (except land) and personal property of all kinds; to purchase, acquire, convey, lease, mortgage, contract for, manage, administer and/or operate alone or jointly with others any interest in real or personal property which includes but not limited to hotels, inns, restaurants, cafes, bars, stores and offices, barbershops and beauty lounges, sports facilities, places of amusement and entertainment of all kinds; to enter into any lawful arrangement for sharing profits with any corporation, association, partnership, person or entity, domestic or foreign, in carrying on or of any business which the corporation is authorized to carry on; or to grant concessions, rights or licenses to others to operate, manage or deal with the same; **and to do any and all things necessary, suitable, convenient, proper or incidental to the accomplishment of the above purposes.**"*(Emphasis Supplied).*

Clearly, petitioner's act of extending loans to related parties is within the ambit of this "catch-all" purpose stated in the Amended Articles of Incorporation. Thus, We agree with the finding of the CTA Special First Division that this transaction may be treated as isolated but transaction incidental "in the course of trade or business" as stated in the assailed Amended Decision, as follows:

> "Petitioner's acts of extending cash advances with interest to its affiliates may be treated as an isolated transaction. However, it does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability. Indeed, a reading of Section 105 of the 1997 Tax Code would show that a transaction 'in the course of trade or business' includes 'transactions incidental thereto.'"[31] Je

---

[31] *Rollo*, p. 64 citing *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 193301 and 194637, March 11, 2013.

Based on the foregoing discussions, the Court *en banc* finds no reversible error to disturb the assailed Amended Decision and Resolution rendered by the Special First Division of this Court.

WHEREFORE, premises considered, the Petition for Review *en banc* is **DENIED**. Accordingly, the assailed Amended Decision and the Resolution promulgated on April 24, 2013 and on September 13, 2013, respectively, by the CTA Special First Division are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been 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