REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1999** *(CTA Case No. 9217)*
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
	Promulgated:
PROCESS MACHINERY CO., INC., *Respondent.*	JUL 17 2020 4:01 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")** filed on 17 December 2018 via registered mail[1] with respondent's **COMMENT TO PETITION FOR REVIEW ("Comment")** filed on 21 February 2019.[2]

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE** is the head of the Bureau of Internal Revenue ("BIR"), duly appointed and

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[1] See Petition, Records, Vol. 1, pp. 1-7.
[2] See Comment, Records, Vol. 1, pp. 40-43.

empowered to perform duties of his office, including, among others, the power to decide, cancel and abate tax liabilities.[3]

Respondent **PROCESS MACHINERY CO., INC.** is a corporation organized and existing under the laws of the Philippines, with offices at 104 Gaston Building, 30 J. Elizalde St., BF Homes, Paranaque City, where it may be served with orders, pleadings and other legal process. It is registered with the BIR with Taxpayer's Identification No. 218-150-171-000. It is engaged in the distribution of crushing, screening, wear protection, conveying and minerals processing equipment, service and systems solutions.[4]

The Facts

On 14 May 2014, respondent was served with a Letter of Authority informing it of the examination of its books of accounts and other accounting records for value-added tax ("VAT") audit.[5]

On 26 May 2014, a First Request for Presentation of Records was served upon respondent. Respondent submitted several documents, which included its schedules of sales and purchases from January to June 2013. On 18 June 2014, a Second and Final Notice, dated 18 June 2014, was issued to respondent.[6]

On 25 June 2015, respondent received a Preliminary Assessment Notice ("PAN"). Respondent filed a response thereto on 9 July 2015 contesting the assessment with documentary support.[7]

On 14 July 2015. A Notice of Assessment and Formal Assessment Notice ("FAN") with Details of Discrepancies was formally issued to respondent. Respondent replied to the FAN reiterating its reasons for disputing the assessment.[8]

On 30 October 2015, petitioner issued the Final Decision on Disputed Assessment ("FDDA"), which was received by respondent on 5 November 2015.[9]

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3 See Petition, Records, Vol. 1, p. 2.
4 *Ibid.*
5 *Ibid.*
6 *Ibid.*
7 *Id.*, p. 3.
8 *Ibid.*
9 *Ibid.*

On 7 December 2015, respondent filed its Petition for Review before the Court in Division.[10] On 17 August 2018, the Court in Division issued a Decision cancelling the deficiency VAT assessment against respondent, *viz:*

> "In view of the foregoing discussions, the computation below will show that petitioner is not liable for an deficiency VAT for the taxable period January 1, 2013 to June 30, 2013:

VATable Sales per return		P16,960,954.67
Add: Undeclared Sales	**P8,167.09**	
Undeclared Sales from issued Official Receipts	**849,110.71**	857,277.80
Gross Receipts subject to VAT		**P17,818,232.47**
Tax Rate		12%
Output Tax Due		**P2,138,187.90**
Less:		
Input tax carry over from previous period	P2,147,412.31	
Input tax from current purchases	3,084,266.56	
Total	5,231,678.87	
Less: Disallowed Input Tax	2,987,640.78	2,244,038.09
VAT Payable		**P(105,850.19)**
Less: Payments made		-
Basic Tax Due		**P(105,850.19)**

> **WHEREFORE,** premises considered, the Petition for Review is **GRANTED.** The VAT assessment issued by respondent against petitioner PMCI for the taxable period, from January 1, 2013 to June 30, 2013, in the aggregate amount of Twelve Million Nine Hundred Seventeen Thousand Eight Hundred Five and 78/100 Pesos (P12,917,805.78) is hereby **CANCELLED.**
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> **SO ORDERED."**[11]

On 4 September 2018, petitioner filed a Motion for Reconsideration against the Decision dated 17 August 2018, which was denied by the Court in Division in a Resolution dated 28 November 2018.[12]

On 17 December 2018, petitioner filed the instant Petition through registered mail.[13]

In a Resolution dated 1 February 2019, respondent was ordered to file a Comment on the Petition,[14] which it complied with by filing its Comment on 21 February 2019.[15]

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10 *Ibid.*
11 See Decision of the Court in Division, Annex "A", Petition, Records, Vol. 1, pp. 8-28.
12 See Resolution dated 28 November 2018, Annex "B", Petition, Records, Vol. 1, pp. 29-32.
13 See Petition, Records, Vol. 1, pp. 1-7.
14 See Resolution dated 1 February 2019, Records, Vol. 1, pp. 37-39.
15 See Comment, Records, Vol. 1, pp. 40-43.

Thereafter, this Court *En Banc* issued a Resolution, dated 7 March 2019, setting the case for mediation.[16] On 8 April 2019, the parties agreed not to have their case mediated by the Philippine Mediation Center Unit – Court of Tax Appeals.[17]

This Court *En Banc* then issued a Resolution, dated 21 May 2019, noting the parties non-agreement to pursue mediation, resolving to give due course to the Petition, and requiring the parties to file their respective Memoranda within thirty (30) days from notice.[18]

On 1 July 2019, respondent filed its Memorandum.[19]

Petitioner failed to file his Memorandum.[20]

Eventually, the present case was submitted for decision in a Resolution, dated 7 August 2019, by this Court *En Banc.*[21]

The Assigned Errors

The issue to be resolved is whether the Court in Division committed reversible error in granting respondent's Petition for Review.[22]

Arguments of the Parties

Petitioner argued the following:

1. Respondent issued official receipts amounting to Php29,750,076.39 which were not declared for VAT purposes. Respondent's defense (*i.e.*, its business practice was to issue initially a sales invoice upon delivery of its goods to its customers and subsequently issue official receipts upon payment of the contract price, which practice was implemented until the effectivity of Revenue Regulation No. 18-2012 ("RR 18-12") on 31 October 2013) is untenable. RR 18-12 did not regulate the issuance of VATable documents (*i.e.*, VAT invoice or VAT receipts). ***Section 113 (A) of the National Internal Revenue Code ("NIRC")*** provides that VAT invoices should be issued for sales of goods while

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[16] See Resolution dated 7 March 2019, Records, Vol. 1, pp. 44-46.
[17] See No Agreement to Mediate dated 8 April 2019, Records, Vol. 1, pp. 47-50.
[18] See Resolution dated 21 May 2019, Records, Vol. 1, pp. 51-53.
[19] See Memorandum, Records, Vol. 1, pp. 54-66.
[20] See Records Verification Report dated 19 July 2019, Records, Vol. 1, p. 67.
[21] See Resolution dated 7 August 2019, Records, Vol. 1, pp. 68-70.
[22] See Memorandum, Records, Vol. 1, p. 57.

VAT receipts should be issued for sales of services. Under ***Section 113 (D) of the NIRC,*** the consequence of erroneously issuing VATable documents is that the issuer will be liable for VAT.[23]

2. For the disallowed input tax amounting to Php2,987,640.78, respondent failed to submit some of the required VAT invoices or official receipts to support the claimed input taxes while some of the invoices and receipts submitted were not in accordance with the invoicing requirements. The attributable input taxes were disallowed pursuant to the provision imposed under ***Section 110 (A) (1) of the NIRC.***

   Respondent's arguments only pertain to purchases from GJ Palmea Steel Fabrication, which allegedly was covered by an official receipt. While the owner of GJ Palmea Steel Fabrication is one of respondent's stockholders, it treats transactions with the former as distinct. However, it is noted in the Financial Statements that Mr. Godofredo Palmea will serve as a subcontractor in every project that respondent engages in, and will have a 50% share in the net profit margin. It was also verified that Mr. Palmea did not declare the sales to respondent. Since there is a tax leak in respondent's set-up, the doctrine of piercing the corporate veil will be applied. Consequently, since one cannot sell to himself and claim input tax therein, the assessment is reiterated.[24]

Respondent alleged the following:

1. The amount of Php29,750,076.39 was considered by petitioner as undeclared sales only on the supposed erroneous use of VATable documents (*i.e.,* use of VAT receipts in sale of goods). Otherwise, petitioner's findings should have been an undeclared sales per sales invoice in a negligible amount of Php8,167.00.[25]

2. ***Section 113 (D) of the NIRC*** does not apply in the present case. The first scenario contemplated under said provision pertains to non-VAT registered persons using the word "VAT" in either its invoices or receipts. On the other hand, the second scenario pertains to VAT-registered persons who use a VAT-invoice or receipt for a VAT-exempt transaction. Respondent does not fall under any as it is a VAT-registered person who issued VAT invoices and receipts for a VATable transaction.[26]

3. Based on ***Revenue Memorandum Circular No. 52-2013 ("RMC 52-13"),*** invoices and receipts with Authority to Print issued prior to 1 January 2011 shall be valid until 31 August 2013. Respondent

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23 See Petition, Records, Vol. 1, p. 4.
24 *Ibid.*
25 See Comment, Records, Vol. 1, p. 41.
26 *Ibid.*

submitted in evidence that the invoices and receipts issued in relation to the VAT audit for January to June 2013 were printed based on the Authority to Print issued by petitioner on 22 June 2009. Petitioner is now being inconsistent with itself in alleging that respondent erroneously used VATable documents for the audit period 1 January 2013 to 30 June 2013 contrary to its own pronouncements in ***RMC 52-13.***[27]

4. With respect to the disallowed input tax in the amount of Php2,987,640.78, respondent no longer contested the same.[28]

The Ruling of the Court En Banc

This Court resolves to **DENY** the **Petition** for lack of merit.

Respondent complied with the VAT invoicing requirements.

Section 113 (A) of the NIRC provides:

> "**SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. -**
> **(A) Invoicing Requirements.** - A VAT-registered person shall issue:
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services."

The proper document to prove the imposition of VAT in every sale of goods is a VAT invoice while a VAT official receipt is the appropriate VATable document for lease of goods and sale of service. These documents may not be interchanged with one another alternatively to prove the imposition of VAT in a transaction where the other is the correct VATable document. This has been explained by the High Court in ***Northern Mindanao Power Corporation v. Commissioner of Internal Revenue,***[29] as follows:

> "Finally, as regards the sufficiency of a company invoice to prove the sales of services to NPC, we find this claim is without sufficient legal basis. Section 113 of the NIRC of 1997 provides that **a VAT invoice is necessary for every sale, barter or exchange of goods or properties, while a VAT**

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27 *Id.*, pp. 41-42.
28 *Id.*,, p. 43.
29 G.R. No. 185115, 18 February 2015.

> **official receipt properly pertains to every lease of goods or properties; as well as to every sale, barter or exchange of services.**
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> The Court has in fact distinguished an invoice from a receipt m Commissioner of Internal Revenue v. Manila Mining Corporation:
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>> A "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.
>> A "receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.
>
> A VAT invoice is the seller's best proof of the sale of goods or services to the buyer, while a VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. **A VAT invoice and a VAT receipt should not be confused and made to refer to one and the same thing. Certainly, neither does the law intend the two to be used alternatively."**
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> (Emphasis, Ours)

There is no question that respondent's business involves the distribution of crushing, screening, wear protection, conveying and minerals processing equipment, service and systems solutions.[30] As such, it is engaged in the sale of goods. Consequently, VAT invoices are the proper VATable documents for respondent's sales transactions.

As aptly found by the Court in Division, respondent issued both a VAT invoice and a VAT official receipt in each of its transactions. Respondent initially issues a VAT invoice upon the consummation of a sale of its goods and subsequently issues a VAT official receipt upon the payment of the amount indicated in these VAT invoices. Each of respondent's VAT official receipts refer to a VAT invoice. Respondent's sales can be traced and reconciled with its VAT invoices and VAT official receipts.[31]

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[30] See Petition, Records, Vol. 1, p. 2.
[31] See Decision of the Court in Division, Annex "A", Petition, Records, Vol. 1, pp. 20-23.

By using VAT invoices for its sales transactions, respondent complied with the VAT-invoicing requirements. As such, petitioner should have based its VAT assessment on respondent's VAT invoices instead of its VAT official receipts, which were merely issued to evidence the payment of the amounts indicated in the VAT invoice. Had petitioner done so, he would have found that the sales transactions reflected in the VAT official receipts, which he used as sole basis for a VAT assessment on undeclared sales, are the same sales transactions covered by respondent's VAT invoices that were properly declared in its VAT Returns, aside from a negligible amount of Php8,167.00.

Section 113 (D) of the NIRC does not allow respondent to impose the 12% VAT on the same transaction twice.

Petitioner bases its VAT assessment against respondent on ***Section 113 (D) of the NIRC.*** Nowhere in this provision can it be found that a person found violating the VAT invoicing rules will be penalized by having the 12% VAT imposed twice, *to wit:*

> "**(D) Consequence of Issuing Erroneous VAT Invoice or VAT Official Receipt.** –
>
> (1) If a person who is not a VAT-registered persons issues an invoice or receipt showing his Taxpayer Identification Number (TIN), followed by the word 'VAT';
>
> (a) The issuer shall, in addition to any liability to other percentage taxes, be liable to:
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> (i) The tax imposed in Section 106 or 108 without the benefit of any input tax credit; and
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> (ii) A 50% surcharge under Section 248(B) of this Code;
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> (b) The VAT shall, if the other requisite information required under Subsection (B) hereof is shown on the invoice or receipt, be recognized as an input tax credit to the purchaser under Section 110 of this Code.
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> (2) If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the term '***VAT exempt sale,***' the issuer shall be liable to account for the tax imposed in section 106 or 108 as if Section 109 did not apply."

Hence, even assuming that respondent issued erroneous VATable documents for its sales transactions (*i.e.*, solely VAT official receipts for sales of goods), it cannot be penalized by imposing another 12% VAT on its sales transactions when said 12% VAT have already been paid. To sanction otherwise would lead to unjust enrichment in favor the government. Philippine laws and public policy abhors unjust enrichment, which is explained as follows:

> "Unjust enrichment exists 'when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.' There is unjust enrichment under Article 22 of the Civil Code when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another... The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it."[32]

Moreover, this Court *En Banc* agrees with respondent that ***Section 113 (D) of the NIRC*** does not apply in the present case. The said provision applies to: i) non-VAT registered persons using the word "VAT" in either its invoices or receipts; and ii) VAT-registered persons who use a VAT-invoice or receipt for a VAT-exempt transaction. Respondent does not fall under either classification as it is a VAT-registered person which issued VAT invoices and receipts for a VATable transaction.

Considering the foregoing, there is no factual and legal basis for the deficiency VAT assessment against respondent due to alleged undeclared sales. As this Court was able to independently verify and is convinced that respondent's alleged undeclared sales were properly substantiated with VAT invoices and were correctly reported in its VAT returns, the Court in Division's removal of this VAT assessment is retained.

Respondent did not contest the disallowed input tax in the amount of Php2,987,640.78.

With respect to the VAT assessment arising from the disallowance of input tax in the amount of Php2,987,640.78 due to respondent's failure to submit VAT invoices and/or VAT official receipts to substantiate the same, it is noted that respondent no longer questioned the Court in Division's ruling on the said assessment item. Hence, the disallowance of unsubstantiated input tax in the amount of Php2,987,640.78 remains.

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32 Filinvest Land, Inc., et al. v. Abdul Backy, et al., G.R. No. 174715, 11 October 2012.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 17 August 2018 and Resolution dated 28 November 2018 promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice