REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MY SOLID TECHNOLOGIES & DEVICES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8854

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JAN 04 2018 ; 3:10 pm

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RESOLUTION

MINDARO-GRULLA, *J.*:

For resolution is respondent's **Motion for Reconsideration**, filed on August 15, 2017, with petitioner's **Comment (Re: Motion for Reconsideration dated August 11, 2017)**, filed through registered mail on September 26, 2017 and received by the Court on September 29, 2017.

Petitioner seeks reconsideration of the Court's Decision dated August 4, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency value-added tax assessment covering the period from January 1, 2012 to June 30, 2012 in the aggregate amount of ₱65,928,415.74 is **CANCELLED** and **SET ASIDE**.

SO ORDERED."

Respondent prays for the reconsideration of the Court's ruling on the cancellation of the disallowed input tax carried over from previous quarter by petitioner in the amount of ₱10,159,773.44. The input tax actually pertains to the unused input tax of Mytel Mobility Solutions Inc. (Mytel) which was transferred to petitioner because they are parties to a merger, with petitioner as the surviving corporation and Mytel as the absorbed corporation.

Allegedly, petitioner and Mytel failed to file any application for merger with the Bureau of Internal Revenue (BIR). Respondent insists that the requirement that application for merger must be filed with BIR cannot simply be set aside pursuant to Sections 235 (e) and 236 (F) of the Tax Code. Respondent contends that the filing of a cancellation of registration due to closure/cessation or termination of business with the BIR guarantees that the absorbed entity does not resort to the circumvention of procedural maneuver that could prejudiced the government. Hence, taxpayer shall be required to surrender all business notices and permits as well as Certificate of Registration (COR) for cancellation. Allegedly, the subject taxpayer is also required to submit a list of ending inventory of goods, supplies, including capital goods; and an inventory/list of unused sales invoices/official receipts (SI/OR) and all other unutilized accounting forms to ensure that the same will no longer be used for any illegal or unlawful purpose. Respondent posits that unless the taxpayer files a notice of merger with the BIR and settles all of its obligations, the merger cannot be considered as valid. In de facto mergers, the transferor's unused input tax cannot be allegedly absorbed by or transferred to the transferee. According to respondent, only a statutory merger or consolidation results in a dissolved corporation and a surviving or new corporation by operation of law.

Petitioner objects on the motion because the grounds relied upon by respondent are devoid of legal basis. Petitioner contends that there is nothing in Sections 235(e) and 236(F) of the Tax Code that expressly requires the prior filing of an application for merger with and/or notification to the BIR as a precondition for the transfer of the absorbed corporation's unused input tax credits to the surviving corporation. On the contrary, Section 4.106-8 of Revenue Regulations (RR) No. 16-2005 explicitly provides that in case of merger or consolidation, the alleged unused input taxes of the absorbed corporation when the merger takes effect shall be transferred to the surviving corporation.

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Petitioner further claims that there is no basis for respondent's argument that the non-filing of a notice of merger has prevented the BIR from conducting a thorough investigation on the tax liabilities of Mytel. Notwithstanding such merger, the BIR is allegedly not prevented from conducting an investigation of Mytel's internal tax liabilities. Petitioner points out that the BIR already issued a formal assessment notice against Mytel on January 25, 2016 for the latter's alleged deficiency taxes for the 1st and 2nd quarters of CY 2012.

After a thorough evaluation of respondent's arguments, the Court finds that the same are mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision. Considering there is no new issue raised in the instant motion and the arguments presented are mere rehash, there is no cogent reason to disturb the assailed Decision.

To reiterate, the issuance of the certificate of merger marks the moment whereupon the consequences of a merger take place. By operation of law, upon the effectivity of the merger, the absorbed corporation ceases to exist but its rights and properties as well as liabilities shall be taken and deemed transferred to and vested in the surviving corporation.[1]

As already found in the assailed Decision, based on the Certificate of Filing of the Articles and Plan of Merger dated May 29, 2012, the SEC approved the Plan and Agreement and the Articles of Merger executed on April 25, 2012 by and between petitioner and Mytel, stating therein that the "entire assets and liabilities of MYTEL MOBILITY SOLUTIONS INC. will be transferred to and absorbed by My Solid Technologies & Devices Corporation". Thus, upon the effectivity of the merger on June 1, 2012, as expressly stated in the Articles of Merger, the unused input tax credit of Mytel was *ipso jure* absorbed by or transferred to petitioner.

Accordingly, the Court correctly cancelled the respondent's disallowance of petitioner's input tax carried over from previous quarter which pertains to the unused input tax of Mytel.

Considering the foregoing, and with respondent's failure to provide any provision of law which requires the notice of merger to

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[1] *Poliand Inudstrial Limited vs. National Development Company, Development Bank of the Philippines, and the Honorable Court of Appeals and National Development Company vs. Poliand Industrial Limited,* G.R. Nos. 143866 and 143877, August 22, 2005.

the BIR as a pre-condition for the transfer of the absorbed corporation's unused input tax credits to the surviving corporation in case of a merger, respondent's allegations are found bereft of merit.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** 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

ON LEAVE
ERLINDA P. UY
Associate Justice