REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

SAN ROQUE POWER CORPORATION, *Petitioner,*	**CTA CASES NOS. 7882 & 7937**
- *versus* -	Members: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 20 2017 1:03 p.m.

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RESOLUTION

On February 8, 2012, the Court promulgated a Decision dismissing CTA Case No. 7882 for having been filed late and CTA Case No. 7937 for having been prematurely filed.

On September 4, 2012, the Court promulgated a Resolution denying San Roque's Motion for Reconsideration, Supplemental Motion for Reconsideration and Second Supplemental Motion for Reconsideration.

San Roque Power Corporation then filed a Petition for Review before the Court *En Banc*, docketed as CTA *EB* Case No. 938. On June 25, 2013 and November 20, 2013, the Court *En Banc* promulgated a Decision and Resolution, respectively, partially granting the Petition for Review.

The dispositive portion of the June 25, 2013 Decision read as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTLY GRANTED.** The Court Division's dismissal of CTA Case No. 7882 for having been filed late is

> **AFFIRMED**, while the Court Division's dismissal of CTA Case No. 7937 for having been prematurely filed is **REVERSED AND SET ASIDE.** Accordingly, CTA Case No. 7937 is **REMANDED** to the CTA-Third Division to make a proper and immediate determination of the propriety of the claim for refund or tax credit certificate, and consequently, make a declaration of the specific amount of refund or tax credit certificate to which petitioner is entitled to, if any.
>
> **SO ORDERED.**

The dispositive portion of November 20, 2013 Resolution read as follows:

> **WHEREFORE,** respondent's Motion for Partial Reconsideration (Re: Decision dated June 25, 2013), and petitioner's Motion for Partial Reconsideration (RE: Decision dated June 25, 2013) both filed on July 23, 2013 are **DENIED** for lack of merit.
>
> **SO ORDERED.**

Thereafter, both parties elevated the matter to the Supreme Court, entitled, *"Commissioner of Internal Revenue vs. San Roque Power Corporation"* docketed as *G.R. No. 210270,* and *"San Roque Power Corporation vs. Commissioner of Internal Revenue"*, docketed as *G.R. No. 210544.*

San Roque Power Corporation vs. Commissioner of Internal Revenue, as G.R. No. 210544.

In *G.R. No. 210544*, petitioner San Roque Power Corporation prays that "the CTA *En Banc's* Decision dated June 25, 2013 and Resolution dated November 20, 2013, insofar as the CTA *En Banc* denied Petitioner's claim for refund of unutilized input VAT attributable to zero-rated sales for the first and second quarters of CY 2007 (CTA Case No. 7882) in the Amount of Php17,459,164.54 and, thereafter, issue a decision granting [] petitioner's claim for refund of or issuance of a TCC for Php17,459,164.54 representing unutilized input VAT attributable to zero-rated sales for the first and second quarters of CY 2007."

On February 19, 2014, the Supreme Court First Division issued a Minute Resolution[1] denying the petition for "failure of petitioner to sufficiently show that Court of Tax Appeals committed any reversible error in the challenged decision and resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction."

On October 9, 2014, the Supreme Court First Division issued an Entry of Judgment[2] stating that the Resolution dated February 19, 2014 has become **final and executory** and is hereby recorded in the Book of Entries of Judgments. The same was transmitted to the CTA by registered mail on May 8, 2015 and was received by the CTA *En Banc* on June 9, 2015.[3]

Commissioner of Internal Revenue vs. San Roque Power Corporation, G.R. No. 210270

G.R. No. 210270 was filed by the CIR praying that the Supreme Court reverse and set aside the CTA *En Banc* Decision promulgated on June 25, 2013 and Resolution promulgated on November 20, 2013, and a new one be rendered denying and dismissing San Roque Power Corporation's claim for refund for the third and fourth quarters of CY 2007.

On November 10, 2014,[4] counsels for the CIR filed, by registered mail, a Manifestation and Motion, which is quoted hereunder, to wit:

> In view of the letter dated January 13, 2014 of Assistant Commissioner Alfredo V. Misajon to respondent recommending for the issuance of a tax credit certificate (TCC) relative to respondent's application for tax credit/refund representing the unutilized input VAT for the 3rd and 4th quarters of CY 2007, the very same periods subject of this petition, the undersigned counsels intend to file a Manifestation in lieu of Reply.
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> The undersigned counsels deemed it appropriate to solicit the position of the Bureau of Internal Revenue (BIR) on the propriety of pursuing the case. To date, however, the undersigned counsels have yet to receive a reply from the BIR.

[1] Records, CTA Case No. 7882, Vol 3, p. 1676.
[2] Records, CTA Case No. 7882, Vol 3, p. 1675.
[3] Records, CTA Case No. 7882, Vol 3, p. 1673.
[4] Records, CTA Case No. 7882, Vol 3, p. 1654.

Thus, they are constrained to pray for an additional period within which to file the intended Manifestation.

On November 28, 2014, the CIR filed by registered mail, a Manifestation and Motion (In Lieu of Reply), stating that "the BIR confirmed that out of respondent's application for tax credit/ refund representing the unutilized input VAT for the third (3rd) and fourth (4th) quarters of taxable year 2007, the very same periods subject of this petition, the amount of Php10,493,543.56 was recommended for the issuance of tax credit certificate (TCC)."

Counsel for CIR prayed as follows:

> WHEREFORE, it is respectfully prayed that the instant Manifestation (In Lieu of Reply) be NOTED and CONSIDERED in the resolution of the petition. It is further prayed that the instant petition be considered WITHDRAWN considering that it has become moot and academic.

On April 20, 2015, the Supreme Court First Division issued a Minute Resolution[5] ordering San Roque Power Corporation to file its Comment on the CIR's Manifestation and Motion.

On July 14, 2015, San Roque Power Corporation filed, by registered mail, a Comment [To Petitioner's Manifestation and Motion (In Lieu of Reply)] confirming that it has accepted the amount of Php10,493,543.56 that was recommended and approved by the CIR for issuance of TCC, thus, we quote:

> xxx xxx xxx
>
> 3. **Respondent confirms that it has indeed accepted the amount of Ten Million Four Hundred Ninety Three Thousand Five Hundred Forty Three and 56/100 Pesos (Php10,493,543.56) recommended and approved by Petitioner for issuance of TCC.**
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> 4. Therefore, respondent hereby accedes to Petitioner's request to consider her Petition for Review **withdrawn for being moot academic.**[6]

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[5] Records, CTA Case No. 7882, Vol 3, p. 1681.
[6] Underscoring ours.

On August 17, 2015, the Supreme Court First Division issued a Minute Resolution which denied the CIR's Petition for Review for being moot, to wit:

> The Court resolves to **NOTE** the respondent's comment (on the petitioner's manifestation and motion [in lieu of reply to the comment on the petition for review on certiorari]), which states that the instant petition has become moot and academic on account of the BIR's approval of respondent's administrative claim for refund and respondent's acceptance of the amount approved by the Bureau of Internal Revenue, praying that the instant petition be deemed withdrawn for being moot and academic.
>
> Acting on the Office of the Solicitor General's manifestation and motion (in lieu of reply to the comment on the petition for review on certiorari) that on account of the Bureau of Internal Revenue's approval of respondent's administrative claim for refund and respondent's acceptance of the amount approved by the Bureau of Internal Revenue, the Court further resolves to **DENY** the petition for being moot.

On December 29, 2015, the Supreme Court First Division issued an Entry of Judgment stating that the Resolution dated August 17, 2015 has become final and executory and is hereby recorded in the Book of Entries and Judgments.

On November 4, 2016, the Court *En Banc* received the Letter of Transmittal from the Supreme Court First Division with the attached photocopies of the resolution rendered by the Supreme Court on August 17, 2015 and the entry of judgment made therein.

On November 11, 2016, the records of the consolidated cases CTA Case Nos. 7882 and 7937 were forwarded to the CTA Third Division pursuant to the Decision by the CTA *En Banc,* in CTA *EB* No. 938 dated June 25, 2013, affirming the dismissal of CTA Case No. 7882 and remanding CTA Case No. 7937 to the Third Division "to make a proper and immediate determination of the propriety of the claim for refund or tax credit certificate, and consequently, make a declaration of the specific amount of refund or tax credit certificate to which petitioner is entitled to, if any."

In sum, the Court takes note of the following:

1. The Supreme Court's denial of the Petition for *Certiorari* filed by San Roque Corporation, docketed as *G.R. No. 210544,* which essentially questions the denial of its tax refund for the first and second quarters of CY 2007, for its failure to sufficiently show that the Court of Tax Appeals committed any reversible error in the challenged decision and resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction;

2. The manifestations filed by the CIR stating that a TCC in the amount of Php10,493,543.56 for the third and fourth quarters of CY 2007 was already issued, and the same was confirmed and accepted by San Roque Power Corporation;

3. The subject of the TCC are the claims for refund for the third and fourth quarters of CY 2007, which is the subject of the Petition for *Certiorari* filed by the CIR docketed as *G.R. No. 210270,* which in turn is the subject of CTA Case No. 7937; and

4. The Entries of Judgment issued by the Supreme Court in *G.R. No. 210544* and *G.R. No. 210270,* dated October 9, 2014 and December 29, 2015, respectively.

Thus, there is nothing more for the CTA Third Division to resolve as the matter was already resolved before the Supreme Court as evidenced by the Entries of Judgment aforementioned.

WHEREFORE, premises considered, the consolidated cases docketed as CTA Case Nos. 7882 and 7937 are hereby **CLOSED** and **TERMINATED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice