REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CRESCENT PARK 6-3 PROPERTY HOLDINGS, INC., *Petitioner,*	CTA EB No. 1126 (CTA CASE No. 8058)
	Present: DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA,
-versus-	UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	RINGPIS-LIBAN, *JJ.* Promulgated: JUN 02 2016 3:25 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is a Motion for Reconsideration[1] filed by Crescent Park 6-3 Property Holdings, Inc. (Crescent Park) seeking to set aside this Court's Decision promulgated on October 15, 2015,[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Amended Decision dated February 5, 2014 is hereby **AFFIRMED**.
>
> **SO ORDERED.**"

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[1] Filed on November 18, 2015.
[2] *En Banc* Docket, pp. 107-117.

In its motion, Crescent Park insists that its absence of BIR Authority to Print (ATP) at the time the receipts were issued should not be fatal for its claim for refund or issuance of tax credit certificate, citing the case of *Intel Technology Philippines, Inc., vs. Commissioner of Internal Revenue*[3] *(the "Intel Case").* Further, Crescent Park contends that it need not comply with the requirements under Section 113(A), in relation to Sections 237 and 238 of the National Internal Revenue Code (NIRC) of 1997. According to Crescent Park, the requirements provided for under Section 113 are needed to prove input taxes and not zero-rated sales. On the other hand, Section 112, which is the basis for the claim for refund or issuance of tax credit certificate, does not mention that invoices or receipts submitted to substantiate zero-rated sales should be with an ATP. Crescent Park also upholds its same arguments that the issue was raised first time on appeal, that failure to secure ATP does not automatically warrant denial of claim for refund, and that even on the assumption that it needs to comply with the requirements of Section 113(A), in relation to Sections 237 and 238 of the NIRC of 1997, it was able to do so. Lastly, Crescent Park cites the case of *Crescent Park 6-24 Property Holdings, Inc. vs. Commissioner of Internal Revenue*[4] *(the "Crescent Park 6-24 Case"),* which is of similar issue where the Special First Division granted its claim for refund.

Records Verification Report dated February 6, 2016 states that Commissioner of Internal Revenue (CIR) failed to file her Comment.

The main thrust of Crescent Park's arguments boils down on the fatality of absence of ATP at the time the receipts were issued.

The motion is bereft of merit.

It must be noted that the Supreme Court[5] has applied Sections 113, 237 and 238 of the NIRC of 1997 in zero-rated

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[3] G.R. No. 166732, April 27, 2007.
[4] CTA Case No. 8202, September 10, 2014.
[5] J.R.A. Philippines, Inc., vs. Commissioner of Internal Revenue, G.R. No. 171307 August 28, 2013; Southern Philippines Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 179632 October 19, 2011; Microsoft Philippines, Inc., vs. Commissioner of Internal Revenue, G.R. No. 180173, April 6, 2011.

sales, thus, Crescent Park's argument that it need not comply with the requirements of the said provisions is misplaced.

Also, the application of the *Intel Case* is misplaced. The invoices presented therein did not indicate or reflect the ATP. In other words, the issue therein is the fatality of invoice or receipt not reflecting or indicating the ATP. On the other hand, the ATP in this instant case was absent at the time of the sales transaction.

Crescent Park seems at lost on the ground of the denial of its claim. Its claim was denied not because of failure to reflect its ATP in the receipts but at the time the sales transaction took place, Crescent Park has no authority to speak of as the said ATP was only issued after the said transaction.

To add justification in the denial of its motion, Sections 237 and 238 of the NIRC of 1997 provide:

> **SEC. 237. Issuance of Receipts or Sales or Commercial Invoices.** - xxx
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> The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, xxx
>
> xxx xxx xxx
>
> **SEC. 238. Printing of Receipts or Sales or Commercial Invoices.** - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same. xxx" (Underlining Supplied.)

Applying the foregoing, a receipt or invoice must be issued at the time of the transaction, but before the taxpayer could print a receipt or invoice to be issued, it shall secure first from the BIR an ATP.

While Crescent Park presented the related sales transaction receipts, it failed to prove that such receipts are official. It must be noted that Crescent Park was only able to secure its ATP in February 22, 2011. However, the transactions covered by the refund were for the year 2009. Thus, securing the ATP after the transaction took place was fatal to Crescent Park's claim for refund.

Clearly, at the time of sales transaction, there was no official receipt that would substantiate the zero-rated sales. Consequently, without the zero-rated sales, Crescent Park cannot claim for a refund or issuance of tax credit certificate.

The case of *Emerson Electric (Asia) Limited-ROHQ vs. Commissioner of Internal Revenue*[6] *(the "Emerson Case")* is more appropriate, to wit:

> Respondent correctly argued that the absence of an ATP is fatal to petitioner's claim for refund/tax credit of input tax attributable to zero-rated sales. Petitioner may have secured an ATP from respondent but the same was issued after the period when the alleged zero-rated transactions occurred. It is clear that the law requires VAT-registered taxpayers to issue a VAT invoice or official receipt in accordance with Section 113 of the NIRC of 1997, as amended, and that the invoices and the official receipts issued should be duly registered. In other words, securing the required ATP after the subject transactions took place is fatal to petitioner's refund claim."

In the case of *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[7] the Supreme Court ruled that:

> "<u>This brings us to the question of whether a claimant for unutilized input VAT on zero-rated sales is required to present proof that it has secured an ATP from the BIR prior to the printing of its invoices or receipts.</u> ℓ

[6] CTA Case No. 8470, October 1, 2014.
[7] G.R. No. 172378, January 17, 2011.

We rule in the affirmative.

Under Section 112 (A) of the NIRC, a claimant must be engaged in sales which are zero-rated or effectively zero-rated. To prove this, duly registered invoices or receipts evidencing zero-rated sales must be presented. However, since the ATP is not indicated in the invoices or receipts, the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP from the BIR. Without this proof, the invoices or receipts would have no probative value for the purpose of refund. In the case of *Intel*, we emphasized that:

> It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities engaged in business to secure a BIR authority to print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. Indeed, what is important with respect to the BIR authority to print is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered." (Underlining supplied)

Thus, as stated by the Supreme Court in *Intel:*

> "It is clear from the foregoing that while entities engaged in business are required to secure from the BIR an authority to print receipts or invoices and to issue duly registered receipts or invoices, it is not required that the BIR authority to print be reflected or indicated therein." (Underlining Supplied.)

Clearly, these are two different matters. While this Court concedes that it is not a requirement that the ATP be reflected or indicated in the invoice or receipt to substantiate a claim for refund or issuance of tax credit certificate, absence of such authority at the time the receipts or invoices were issued is fatal for the claim.

Crescent Park contends that absence of ATP in its receipts does not automatically warrant denial of its claim for refund and that Section 264 of the NIRC of 1997 merely imposes the penalty of fine and imprisonment. However, to reiterate, the said sanction by Section 264 applies on failure to reflect ATP in invoices or receipts but the ground for dismissal herein is the absence of ATP at the time of the issuance of receipts.

It must be noted that the case of *Crescent Park 6-24* promulgated by the Special First Division is still pending appeal before this Court *En Banc* and thus, not yet final and executory.[8] Moreover, *En Banc* decisions prevail over Division rulings. In addition, the *Emerson Case* is more appropriate, having been promulgated later than *Crescent Park 6-24,*[9] not to mention that it has already attained finality.[10]

Lastly, the general rule provides that an assignment of error is essential to appellate review and only those assigned will be considered, save for exceptions including matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice.[11] This case falls under the said exception.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

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[8] Docketed as CTA EB 1230.
[9] *Crescent Park 6-24* was promulgated on September 10, 2014, while *Emerson* was promulgated on October 1, 2014.
[10] Entry of Judgment on January 27, 2015.
[11] Steel Corporation of the Philippines vs. Equitable PCI Bank, Inc./DEG-Deutsche Investitions-Und Entwicklungsgesellschaft MBH vs. Equitable PCI Bank, Inc., G.R. No. 190462 G.R. No. 190538, November 17, 2010.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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 M. RINGPIS-LIBAN
Associate Justice