REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB NO. 610 (CTA CASE NOS. 7227, 7287, & 7317)
	Present:
- versus -	ACOSTA, *P.J.* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *JJ.*
MINDANAO II GEOTHERMAL PARTNERSHIP, Respondent.	Promulgated: NOV 0 2 2010

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DECISION

UY, *J.*:

Before Us is a Petition for Review filed by the petitioner, Commissioner of Internal Revenue, assailing the Resolution dated March 12, 2010 of the Special First Division of this Court, in CTA Case Nos. 7227, 7287, and 7317 entitled *"Mindanao II Geothermal Partnership, petitioner, versus Commissioner of Internal Revenue, respondent"* which denied petitioner's Motion for Partial Reconsideration of the Amended Decision dated June 26, 2009 rendered in said consolidated cases. The dispositive portions of the Amended Decision and assailed Resolution dated March 12, 2010[1] read as follows:

Amended Decision dated June 26, 2009:

> "**WHEREFORE,** the **'MOTION FOR PARTIAL RECONSIDERATION'** of petitioner [*herein respondent*] is hereby **DENIED** for lack of merit; while the **'MOTION FOR PARTIAL RECONSIDERATION'** of respondent [*herein petitioner*] is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the Decision promulgated on September 22, 2008 is hereby **MODIFIED** as follows:
>
> > '**WHEREFORE,** the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent [*herein petitioner*] is hereby **ORDERED to REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the modified amount of **TWO MILLION NINE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED EIGHTY SEVEN AND 77/100 PESOS (P2,980,887.77)** representing its unutilized input VAT for the third and fourth quarters of taxable year 2003.
> >
> > **SO ORDERED**.'
>
> **SO ORDERED."**

Resolution dated March 12, 2010:

> "**WHEREFORE,** premises considered, respondent-CIR's Motion for Partial Reconsideration filed on August 21, 2009 is hereby **DISMISSED**.
>
> **SO ORDERED."**

In the instant petition, petitioner prays that the Resolution dated March 12, 2010 be reversed and set aside, and that the said consolidated cases be remanded to the Court *a quo* for the resolution on the merits of the petitioner's Motion for Partial Reconsideration filed therein on July 21, 2009. Or in the alternative, should the Court *En Banc* grant the instant Petition for Review and decide to resolve the said Motion for (Partial) Reconsideration, petitioner prays

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[1] Docket, pp. 43 to 46.

that the Amended Decision dated June 26, 2009 be partially reconsidered, and a Resolution be rendered denying respondent's claim for refund in its entirety.

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, Agham Road, Quezon City.

On the other hand, respondent Mindanao II Geothermal Partnership is a partnership duly registered with the Securities and Exchange Commission with principal address at Barangay Ilomavis, Kidapawan City, North Cotabato. It is registered as value-added tax (VAT) taxpayer with the BIR. It has been accredited as a Block Power Production Facility by the Department of Energy.

On March 11, 1997, respondent allegedly entered into a Build-Operate-Transfer (BOT) Contract with the Philippine National Oil Corporation-Energy Development Company (PNOC-EDC) for finance, engineering, supply, installation, testing, commissioning, operation, and maintenance of a 48.25 megawatt geothermal power plant, provided that PNOC-EDC shall supply and deliver steam to respondent at no cost. In turn, respondent shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the National Power Corporation (NPC) for and in behalf on PNOC-EDC.

According to respondent, its sale of generated power and delivery of electric capacity and energy of respondent to NPC for and in behalf of PNOC-EDC is its only revenue-generating activity which is in the ambit of VAT zero-rated sales under Section 6 of the Electric Power Industry Reform Act (EPIRA) of 2001,[2] which states:

> "SEC. 6. *Generation Sector.* – Generation of electric power, a business affected with public interest, shall be competitive and open.
>
> Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.
>
> Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.
>
> **Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.**
>
> The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements." *(Emphasis supplied)*

In relation thereto, Section 6(b) of Rule 5, Part II of the Rules and Regulations to Implement Republic Act No. (RA) 9136, entitled "Electric Power Industry Reform Act of 2001" provides as follows:

> "**Section 6. Generation Charges and VAT.**
>
> xxx xxx xxx
>
> (b) Pursuant to the policy of reducing electricity rates to End-users, sales of generated power by a Generation Company shall, from the effectivity of the Act, be zero-rated for the purpose of

[2] Republic Act No. 9136.

> imposition of value-added tax. Towards this end, the imposition of zero percent (0%) VAT shall apply to the sale of generated power by a Generation Company through all stages of sale until it reaches the End-user. The DOF, through the BIR, shall issue the necessary revenue regulation within sixty (60) calendar days from effectivity of these Rules."

The above-stated law amended the National Internal Revenue Code of 1997. Thus, upon the effectivity of RA 9136, the VAT rate applicable to sales of generated power by generation companies shall be zero percent (0%), and no longer at ten percent (10%).

In the course of its operation, respondent made domestic purchases of goods and services and accumulated therefrom creditable input taxes. Pursuant to the provisions of the NIRC, respondent alleged that it can use its accumulated input tax credits to offset its output tax liability. Considering, however, that its only revenue-generating activity is VAT zero-rated under RA 9136, respondent's input tax credits remained unutilized.

Thus, on the belief that its sales qualify for VAT zero-rating, respondent adopted the VAT zero-rating of the EPIRA of 2001 in computing for its VAT payable when it filed its Quarterly VAT Returns on the following dates:

Period covered (2003)	Date of filing	
	Original Return	Amended Return
1st quarter	April 23, 2003	July 3, 2004, April 1, 2004 & October 22, 2004
2nd quarter	July 22, 2003	April 1, 2004
3rd quarter	October 27, 2003	April 1, 2004
4th quarter	January 26, 2004	April 1, 2004

Considering that it has accumulated unutilized creditable input taxes from its only revenue-generating activity, respondent filed an application for refund and/or issuance of tax credit certificate with the BIR's Revenue District Office at Kidapawan City on April 13, 2005 for the four (4) quarters of 2003.

Due to the inaction of petitioner, respondent filed three (3) separate Petitions for Review. The *first* (docketed as CTA Case No. 7227), covering the 1st quarter of 2003, was filed on April 22, 2005; the *second* (docketed as CTA Case No. 7287), covering the 2nd quarter of 2003, was filed on July 7, 2005; and the *third* (docketed as CTA Case No. 7317), covering the 3rd and 4th quarters, was filed on September 9, 2005.

After the filing of petitioner's Answers on the following dates: in CTA Case No. 7227, on July 8, 2005; in CTA Case No. 7287, on August 11, 2005; and in CTA Case No. 7317, on October 20, 2005, and upon respondent's motion, the said petitions were consolidated on March 15, 2006 as these involve the same parties and the same subject matter, except the taxable periods involved in each petition.

After trial, the Court in Division rendered its original Decision on September 22, 2008, the dispositive portion of which reads:

> "**WHEREFORE**, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent [*herein petitioner*] is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the modified amount of **SEVEN MILLION SEVEN HUNDRED THREE THOUSAND NINE HUNDRED FIFTY SEVEN AND 79/100 PESOS (P7,703,957.79)** representing its unutilized input VAT for the four (4) quarters of the taxable year 2003.
>
> **SO ORDERED.**"

From the said Decision, both parties filed their respective Motions for Partial Reconsideration, respondent on October 13, 2008 and petitioner on October 14, 2008.

On June 26, 2009, the Court in Division rendered the subject Amended Decision in the following manner: respondent's Motion for Partial Reconsideration was **DENIED** for lack of merit; while petitioner's Motion for Partial

Reconsideration was **PARTIALLY GRANTED**, and petitioner was ordered to **REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the modified amount of **TWO MILLION NINE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED EIGHTY SEVEN AND 77/100 PESOS (₱ 2,980,887.77)** representing its unutilized input VAT for the third and fourth quarters of taxable year 2003.

From the Amended Decision, two (2) separate actions were taken by the parties, to wit:

1) On July 28, 2009, herein respondent filed with this Court *En Banc* a Petition for Review docketed as CTA EB No. 513 entitled *"Mindanao II Geothermal Partnership, petitioner, versus Commissioner of Internal Revenue, respondent"*, praying that the said Amended Decision of the Court in Division insofar as it declared its claim for the first and second quarters of year 2003 to have allegedly prescribed, be reversed, and a new judgment be rendered giving due course and granting the said claim for refund or issuance of tax credit certificate in the total amount of ₱ 8,244,199.52. (The incidents in this case will no longer be discussed herein.)

2) On July 21, 2009, petitioner filed a Motion for Partial Reconsideration of the same Amended Decision before the Court *a quo*. A Comment/Opposition thereto was filed by herein respondent on August 24, 2009, arguing, among other matters, that the said motion is an improper remedy. The Court *a quo* treated the said motion as a second motion for reconsideration, which is proscribed to be filed under Section 7, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA). Thus, the Court *a quo*, in its Resolution dated March 12, 2010, **DISMISSED** the aforementioned second Motion for Partial Reconsideration.

Consequently on April 19, 2010, petitioner filed the instant Petition for Review docketed as CTA EB Case No. 610[3] assailing the said dismissal. On May 17, 2010, respondent filed its Comment/Opposition[4] thereto. Thereafter, this case was deemed submitted for decision on June 23, 2010.[5]

Hence, this Decision.

ASSIGNMENT OF ERROR

Petitioner assigns one (1) error allegedly committed by the Special First Division of this Court, *viz*:

> "THE SPECIAL FIRST DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION OF THE AMENDED DECISION IS A SECOND MOTION FOR RECONSIDERATION PROSCRIBED BY THE RULES."[6]

Petitioner's Arguments

Petitioner argues that by its nomenclature alone, an amended decision vacates the original decision and necessarily, it is as if a new one had been rendered. According to petitioner, an amended decision supplants the original. Being a decision, it has not been moved to be reconsidered and that it would be ridiculous to hold that the motion for reconsideration filed by petitioner, even before the existence of the amended decision, is the first of such motion and the one filed after, is the second motion proscribed by the rules. Petitioner submits that an amended decision is a new decision both in fact and in law, and being a new decision, it necessarily follows that generally, a motion for reconsideration is required to allow the Court to reconsider its decision which vacated the previously

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[3] Docket, pp. 7 to 20.
[4] Docket, pp. 67 to 71.
[5] Resolution dated June 23, 2010, Docket, pp. 87 to 88.
[4] Docket, pp. 67 to 71.
[5] Resolution dated June 23, 2010, Docket, pp. 87 to 88.
[6] Docket, p. 15.

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issued one and rectify errors, if there is any. Thus, it would be the first time the Court would be asked to reconsider their newly minted decision, and the denial of petitioner's Motion for Partial Reconsideration filed on July 21, 2009, for being a second motion for reconsideration, was clearly erroneous.

<u>Respondent's counter-arguments</u>

Respondent contends that the Motion of Partial Reconsideration dated July 21, 2009 filed by petitioner is a second motion for reconsideration proscribed by the rules; and that the same Motion is a *pro forma* motion and does not toll the running of the running of the period to appeal.

THE COURT EN BANC'S RULING

Section 7, Rule 15 of the RRCTA provides as follows:

> "SEC. 7. *No second motion for reconsideration or for new trial.*— No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order."

It is clear from the foregoing that the filing of a second motion for reconsideration of a decision is prohibited. This prohibition is justified by public policy which demands that at the risk of occasional errors, judgments of courts must become final at some definitive date fixed by law.[7]

In this case, the crux of the controversy is whether petitioner's Motion for Partial Reconsideration filed on July 21, 2009 of the subject Amended Decision should already be treated as a "second" motion for reconsideration. Petitioner believes that it should not as yet be treated as such, and anchors this stand on the ruling of the Supreme Court in the case of ***Lee vs. Trocino, et al.***,[8] to wit:

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[7] *Government Service and Insurance System vs. Court of Appeals, et al.*, G.R. No. 101632, January 13, 1997.
[8] G.R. No. 164648, August 6, 2008.

> "When the appellate court promulgated the August 18, 2000 Amended Decision reversing the January 12, 2000 decision, **it necessarily follows that the latter verdict was automatically deemed vacated. It ceased to exist in contemplation of law.** xxx.
>
> xxx. When the Amended Decision was issued, **it effectively superseded the January 12, 2000 Decision, vacating the latter in its entirety.**" *(Emphases supplied)*

Based on the foregoing, petitioner is saying that when the Court *a quo* rendered the subject Amended Decision, its earlier Decision was automatically vacated, ceased to exist in contemplation of law, and effectively superseded. Thus, petitioner's Motion for Partial Reconsideration filed on July 21, 2009 should not be treated as a second motion for reconsideration since it is a motion to reconsider a "newly minted decision".

We disagree.

The above-quoted ruling in the case of ***Lee vs. Trocino, et al.*** cannot squarely apply to the instant case. A careful reading of the subject Amended Decision would reveal that it does not totally vacate nor supersede the original Decision. In fact, the dispositive portion in the said Amended Decision clearly states that it merely "MODIFIED" the original Decision. Thus, there are certain aspects in the original Decision which remained undisturbed, such as the finding that the amount of ₱ 3,521,129.50, representing input value-added tax claim for the third and fourth quarters of 2003 is available for refund. Such undisturbed aspects necessitate reference to the original Decision.

Furthermore, it must be pointed out that the denomination of the Amended Decision in question, as such, does not necessarily entail that the previous or original Decision has been reversed in its entirety, for it may only be modified, as in this case. This is in accordance with Section 3 of Rule 14 of the RRCTA and

Section 3 of Rule VIII of the Internal Rules of the Court of Tax Appeals, which respectively provide as follows:

<u>Sec. 3 of Rule 14 of the RRCTA:</u>

"SEC. 3. *Amended decision.—* Any action **modifying** or reversing a decision of the Court *en banc* or in Division shall be denominated as Amended Decision." *(Emphasis supplied)*

<u>Sec.3 of Rule VIII of the Internal Rules of the Court of Tax Appeals:</u>

"SEC. 3. *Resolutions.—* Any disposition other than on the merits shall be embodied in a Resolution. Any action **modifying** or reversing a Decision of the Court *en banc* or in Division shall be denominated as "Amended Decision." *(Emphasis supplied)*

Moreover, a perusal of the arguments raised in the Motion for Partial Reconsideration filed on July 21, 2009 by petitioner shows that these are either: a mere rehash of the arguments raised in her Motion for Partial Reconsideration filed on October 14, 2008, or a mere reference to the basic issues which have already been passed upon by the Court in Division in the assailed Amended Decision. A second motion for reconsideration which contains mere iterations and reiterations of the same points and arguments over and over again becomes, in effect, a mere dilatory strategy and consequently nothing more than *pro forma*.[9]

WHEREFORE, in view of the foregoing considerations, the instant Petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[9] *Luzon Brokerage Co., Inc. vs. Maritime Building Co, Inc., et al.*, G.R. No. L-25885, November 16, 1978.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

See attached Dissenting Opinion

(with Dissenting Opinion)
OLGA PALANCA-ENRIQUEZ
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(concurs with the Dissenting Opinion of Justice Enriquez)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice