REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TeaM ENERGY CORPORATION (Formerly: MIRANT PAGBILAO CORPORATION),
Respondent.

CTA EB No. 1364
(CTA CASE No. 7617)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

JAN 30 2017 1:15 p.m.

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves petitioner's **"MOTION FOR RECONSIDERATION"** filed on September 28, 2016, with respondent's **"COMMENT/OPPOSITION"** posted on November 21, 2016.

In the present Motion, petitioner seeks reconsideration of the Court *En Banc*'s Decision dated August 31, 2016 and prays for the denial of respondent's claim for refund. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, in light of the foregoing, petitioner Commissioner of Internal Revenue's *Petition for Review* is **DENIED**. The assailed Resolutions dated May 29, 2015 and

September 9, 2015 reinstating the July 13, 2010 Decision of the Court Special First Division in CTA Case No. 7617 are **AFFIRMED**.

Petitioner asserts that in order that the sale of services by a generation company to the National Power Corporation (NPC) may be regarded as zero-rated under Section 108 (B) (3) of the National Internal Revenue Code (NIRC) of 1997, as amended, the generation company must prove its compliance with the relevant regulatory requirements under Republic Act No. 9136, one of which is the presentation of its Certificate of Compliance (COC) issued by the Energy Regulatory Commission (ERC). According to petitioner, the COC will establish that the generation company is authorized to operate as such. Petitioner avers that without such authority from the ERC, respondent cannot and should not be considered as a generation company as contemplated under our laws. Citing *Toledo vs. Commissioner of Internal Revenue,*[1] petitioner posits that the COC is an indispensable requirement to prove respondent's entitlement to the claim for refund of excess and/or unutilized input VAT attributable to its zero-rated sales of power generation services to NPC.

Respondent, on the other hand, counter-argues that it has clearly established that it is a power generation company. Respondent also asserts that its claim for refund is anchored on Section 112 (A) of the NIRC of 1997, as amended, in relation to Section 108 (B) (3) of the same Code and Section 13 of the NPC Charter. Respondent finally claims that petitioner's Motion for Reconsideration is a mere rehash of arguments which have already been passed upon by the Court *En Banc* in the assailed Decision.

After carefully reviewing the parties' respective arguments, the Court *En Banc* resolves to deny petitioner's Motion for Reconsideration.

Petitioner's arguments are reiterations or amplifications of those raised in the Petition for Review[2] posted on October 16, 2015, all of which were duly considered in the assailed Decision. To be more specific, petitioner's position regarding the requirement to present a COC from the ERC in order for respondent to prove its entitlement to the claim for refund has been found by the Court *En Banc* to be patently without basis. Indeed, the Court *En Banc* has made an extensive discussion on this matter on pages 11 to 14 of the assailed Decision.

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[1] CTA Case No. 6961, November 11, 2009.
[2] *Rollo*, pp. 8-18.

cM

All told, the Court *En Banc* finds no justifiable reason to reverse or set aside the assailed Decision.

WHEREFORE, premises considered, the Commissioner of Internal Revenue's **"MOTION FOR RECONSIDERATION"** filed on September 28, 2016 is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
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

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

Ma. Belen S-L
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice