REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TANN PHILIPPINES, INCORPORATED,
Respondent.

CTA *EB* No. 2415
(CTA Case No. 9433)

Present:

DEL ROSARIO, *PJ,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JAN 26 2023
4:20 pm

x - x

RESOLUTION

CUI-DAVID, J.:

Before the Court *En Banc* is respondent's *Motion for Reconsideration*[1] filed on September 28, 2022, with petitioner's *Comment/Opposition (To the Motion for Reconsideration dated September 28, 2022)*[2] filed on November 7, 2022, seeking reconsideration of the Decision[3] promulgated on September 14, 2022, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The Decision dated March 3, 2020, and the Resolution dated December 22, 2020, of the Court's Third Division in CTA Case No. 9433 are **MODIFIED.** Respondent is liable for the surcharge and interest in the amount of ₱1,502,212.62. Having collected the sum of

[1] *En Banc* (*EB*) Docket, pp. 133-139.
[2] *Id.*, pp. 149-153.
[3] *Id.*, pp. 94-129.

> ₱1,552,212.62, petitioner is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of respondent, the amount of ₱50,000.00 representing the erroneously collected compromise penalty.

In its Motion, respondent argues that it made exceptional efforts to correct and properly pay its VAT liability for the 4th quarter of 2013 through the series of amendments of its 4th quarterly VAT return on January 28, 2014, January 30, 2014, and March 14, 2014. Respondent asserts that payment was made on its 1st amended quarterly VAT return on January 28, 2014, and not on the original return; so, it cannot be said that there was late payment on which surcharge and penalties may be imposed. Lastly, respondent posits that the amount of ₱1,552,212.62 late payment penalty is yet to become delinquent and should not be garnished.

Petitioner, on the other hand, contends that respondent failed to pay its 4th quarter VAT on its due date; and so, the penalty and surcharge automatically attached to its principal VAT amount due. Petitioner argues that the filing of an amended return does not operate to extend the period in which respondent is required to pay its taxes. Petitioner also insists that payment of surcharge is mandatory and that he is not vested with any authority to waive or dispense with the collection thereof. It is only the Court by virtue of a suspension order that the collection of taxes may be enjoined.

After careful consideration, the Court finds respondent's Motion for Reconsideration bereft of merit. Notably, respondent's arguments are mere rehash of the same facts and issues, which have already been thoroughly discussed, in the assailed Decision.

Respondent's own admission that it paid its 4th quarterly VAT due on January 28, 2014, or one (1) day after the deadline, convinces the Court that the imposition of penalty for late payment is proper. Regardless of the various amendments made by respondent in its 4th quarterly VAT return, the 25% surcharge and interest under Sections 248(A)(4)[4] and 249,[5]

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[4] SEC. 248. *Civil Penalties.* –
(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to **twenty-five percent (25%) of the amount due**, in the following cases:

...

> (4) **Failure to pay the <u>full</u>** or part of the **amount of tax shown on any return required to be filed** under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, **<u>on</u> or <u>before</u> the date prescribed for its payment.** *(Emphasis supplied)*

[5] SEC. 249. *Interest.* -

respectively, are imposed by the law itself for the late payment of taxes. Taxes are considered delinquent when it is proven that the tax was not paid within the last day for payment of the tax.[6] Bad faith is not essential for the imposition of 25% surcharge and interest.[7] Hence, the surcharge is automatically due[8] and the imposition and collection of which is mandatory on which the petitioner has no discretion.[9]

WHEREFORE, there being no new matters and issues advanced that will merit reconsideration, let alone modification of this Court's Decision promulgated on September 14, 2022, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(A) *In General.* - There shall be **assessed** and **collected** **<u>on any unpaid amount of tax</u>**, interest at the rate of twenty percent **(20%) per annum**,[5] or such higher rate as may be prescribed by rules and regulations, **from the <u>date</u> prescribed for <u>payment</u> until the amount is <u>fully paid</u>**.

... ...

(C) *Delinquency Interest.* - In case of **failure to <u>pay</u>**:

(1) **The <u>amount of the tax due on any return</u> to be <u>filed</u>**, or... *(Emphasis supplied)*

[6] *Philippine National Oil Co. v. Court of Appeals,* G.R. Nos. 109976 & 112800, April 26, 2005.

[7] *Republic Cement Corporation v. The Commissioner of Internal Revenue and the Court of Tax Appeals,* G.R. No. L-20660, June 13, 1968.

[8] *Commissioner of Internal Revenue v. Air India and the Court of Tax Appeals,* G.R. No. 72443, January 29, 1988.

[9] *Republic Cement Corporation v. The Commissioner of Internal Revenue and the Court of Tax Appeals,* G.R. No. L-20660, June 13, 1968, citing *Republic v. Luzon Industrial Corporation,* G.R. No. L-7992, October 30, 1957, *Koppel (Philippines), Inc. v. Collector of Internal Revenue,* G.R. No. L-1977, September 21, 1950, *Lim Co Chu v. Posadas,* G.R. No. 23487, February 11, 1925.

x---x

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice