REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HON. COMMISSIONER KIM S. JACINTO-HENARES, HON. RICARDO B. ESPIRITU, Revenue District Officer, Revenue District Office No. 50,
Petitioners,

CTA EB No. 1415
(CTA Case No. 8537)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

- *versus* –

IP CONTACT CENTER OUTSOURCING, INC.,
Respondent.

Promulgated:

DEC 11 2017 2:20pm

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RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of the Court *En Banc* is the **Motion for Reconsideration (Of the Decision dated 05 June 2017)**[1] filed by respondent IP Contact Center Outsourcing, Inc. on July 25, 2017.

Respondent's Motion seeks reconsideration of the Decision[2] of the Court *En Banc* promulgated on June 5, 2017, (the "assailed Decision") which granted the Petition for Review filed by the Commissioner of Internal Revenue (CIR) and, accordingly, set aside the Decision dated September 10,

[1] Court *En Banc*'s Docket, pp. 173-180.
[2] *Id.*, pp. 138-166.

2015 and the Resolution dated December 15, 2015 promulgated by the Third Division of this Court (Court in Division) in CTA Case No. 8537.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the Petition for Review is **GRANTED**. The Decision dated September 10, 2015 and the Resolution dated December 15, 2015 promulgated by the Third Division of this Court are **SET ASIDE**.
>
> Let this case be **REMANDED** to the Court in Division for complete determination of respondent's deficiency tax liabilities for taxable year 2007.
>
> **SO ORDERED.**"

Respondent moves for reconsideration of the assailed Decision on the ground that:

> "THE HONORABLE COURT COMMITTED A SERIOUS, GRAVE BUT REVERSIBLE ERROR WHEN IT GRANTED THE PETITION FOR REVIEW AND REMANDED THE CASE TO THE COURT IN DIVISION FOR THE DETERMINATION OF THE RESPONDENT'S TAX LIABILITY FOR THE YEAR 2007."[3]

Respondent, in its Motion for Reconsideration, contends that the waivers dated November 2, 2010 and May 2, 2011, respectively, were fatally flawed for failure to specify the amount of tax due, which is a clear violation of RMO No. 20-90 in relation to RDAO No. 05-01.[4] Respondent also claims that it is not estopped to question the validity of the waivers and that *in pari delicto* doctrine should not be applied in the present case.[5]

The Court *En Banc* resolves to deny respondent's Motion for Reconsideration for lack of merit.

A careful review of the case records and the arguments raised by respondent in its Motion for Reconsideration reveals that the arguments relied upon are matters which have already been thoroughly discussed and passed upon by the Court *En Banc* in the assailed Decision. Respondent failed to raise any new or substantial matter or any compelling reason that

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[3] *Id.*, p. 174.
[4] *Id.*, p. 175.
[5] *Id.*, p. 176-177.

will justify reversal or even modification of the Court *En Banc*'s findings. Nevertheless, the Court *En Banc* shall state below a few points, if only to reinforce its discussion in the assailed Decision.

The Court *En Banc* finds no reason to reverse its ruling as the factual milieu of the present case are similar to those in *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*.[6] In both cases, there were several waivers with defects that arose from the fault or negligence of both the taxpayer and the Bureau of Internal Revenue (BIR). As the Court *En Banc* explained in the assailed Decision:

> "In the present case, both the petitioners and respondent are *in pari delicto*. The respondent executed the subject waiver in consideration of the opportunity to gather and submit documents to substantiate and defend its case before the BIR at the investigation stage. At the same time, by virtue of the waiver, respondent was able to postpone the payment of subject taxes assessed against it. And yet, after enjoying such benefits, respondent readily challenged the validity of the waiver when the effects thereof were not in its favor. Verily, respondent's act of impugning the subject waiver after benefitting therefrom and allowing the CIR to rely thereon is an act of bad faith.
>
> On the other hand, the CIR was also remiss in its duty of faithfully complying with its own issuances. The CIR ought to ensure that all of the requirements for the execution of a valid waiver are carefully and completely followed. But as found by the Court in Division, the 1st waiver executed by the parties failed to strictly follow the prescribed format as required under RMO No. 20-90 by failing to specify the amount of tax due.
>
> Considering that a waiver of statute of limitations is, in law and in fact, a bilateral agreement between the CIR and the taxpayer, both of them should thus be held responsible in ensuring that their agreement faithfully complies with the law. Failing which, they should both suffer the consequences.
>
> In the same vein, respondent did not come to the court with clean hands. It cannot be allowed to benefit from the flaws of its own waiver and insists on its invalidity to evade its obligation to pay deficiency taxes, when in committing such flaws, the respondent itself is partly to blame. Jz

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[6] G.R. No. 212825, December 7, 2015.

> Moreover, respondent is likewise estopped from challenging the validity of the subject waiver. Respondent allowed petitioners to rely on the waiver they have executed and kept mum on the waiver's defect. Respondent did not raise any objection against the waiver's validity up until it was already assessed with deficiency taxes and penalties." *(Citations omitted)*

WHEREFORE, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

I JOIN J. LIBAN'S DISSENT
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(I maintain my Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I concur with J. Liban's Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice