REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PERCEPTION GAMING, INC., Petitioner,	**CTA Case No. 8509**
	Members:
- *versus* -	**BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** and **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 18 2015 9:02 a.m.

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RESOLUTION

BAUTISTA, J:

This resolves respondent's "Motion for Reconsideration (to the Amended Decision promulgated on May 11, 2015)" filed by registered mail on May 25, 2015, taking into consideration petitioner's "Comments (Re: Respondent's Motion for Reconsideration dated May 25, 2015)," filed on July 20, 2015.

On May 11, 2015, the Court promulgated a Decision, the dispositive portion of which states:

> "**WHEREFORE**, the "Motion for Reconsideration" is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner in the reduced amount of PhP984,259.99, representing erroneously paid VAT Payable for the 2nd to 4th quarters of CY 2010 and the 1st to 4th quarters of CY 2011.

SO ORDERED."

Respondent's Arguments

Respondent alleges that refunds and tax credits are in the nature of tax exemptions, hence, strictly construed against the taxpayer; and that the party claiming for tax refund or credit has the burden of proving that he is entitled to such refund or credit by providing evidence of compliance of certain conditions of the law under which the privilege of exemption is granted.

Moreover, she insists that the taxpayer is bound to comply not only with substantiation requirements but also with the procedural due process to prove its entitlement to the refund.

Furthermore, she maintains that the lease of gaming equipment by petitioner to PAGCOR Operators are subject to 12% VAT which can be passed on to PAGCOR Operators as additional cost of the gaming equipment being leased by the latter.

Lastly, she alleges that while PAGCOR is not liable for VAT and neither the PAGCOR Operators, as the latter are effectively subject to zero percent (0%) rate under Section 108(B)(3) of the NIRC, the exemption does not extend to those entities dealing with the PAGCOR operators. According to respondent, the exemption covers taxes for which the PAGCOR Operators are directly liable, and not one that is passed on by an entity dealing only with a PAGCOR operator such as petitioner.

Petitioner's Argument

Petitioner alleges that its application for the refund of erroneously paid output VAT is not based on the tax-exemption privilege of the PAGCOR-Authorized Bingo Operators, but from the provision in the PAGCOR Charter, specifically, Section 13(2)(b), which confers indirect tax-exemption to suppliers of PAGCOR and its operators.

Likewise, it posits that the tax exemption granted to it is a result of the essential facilities furnished or technical services it renders to the PAGCOR or PAGCOR-Authorized Bingo Operators.

The Ruling of the Court

The Court finds no merit in the Motion for Reconsideration.

A perusal of the Motion for Reconsideration shows that the grounds raised therein are mere reiterations of respondent's Answer filed before the Court, which had already been comprehensively discussed and passed upon in the assailed Amended Decision dated May 11, 2015. Such being the case, we find that the Motion for Reconsideration is *pro forma.*

A motion for reconsideration is *pro forma* where:[1]
(1) it was a second motion for reconsideration;
(2) it did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law or not supported by the evidence;
(3) it failed to substantiate the alleged errors;
(4) it merely alleged that the decision in question was contrary to law; and
(5) the adverse party was not given notice thereof.

In the case at bar, the allegations stated in the Motion for Reconsideration did not point out to the specific findings or conclusions in the Amended Decision which are not supported by evidence or which are contrary to law, neither did the Motion for Reconsideration provide evidence that would convince this Court that it made an error.

Among the ends to which a motion for reconsideration is addressed, is to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence.[2] Thus, having failed to convince the court, the motion must necessarily fail.

WHEREFORE, the "Motion for Reconsideration (to the Amended Decision promulgated on May 11, 2015)," is hereby **DENIED** for lack of merit.

SO ORDERED.

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[1] *Coquilla vs. Commission on Elections,* G.R. No. 151914. July 31, 2002, 434 Phil. 861.
[2] *Guerra Enterprises Company, Inc. vs. Court of First Instance of Lanao del Sur,* 32 SCRA 314, 317 (1970).

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice