REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Second Division

SUBIC WATER & SEWERAGE CO., INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9074

Members:

CASTAÑEDA, JR., *Chairperson*
and
MANAHAN, *JJ.*

Promulgated:
NOV 05 2019 2:30 Pm

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RESOLUTION

MANAHAN, *J.:*

This resolves respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 14 August 2019)**,[1] filed on August 30, 2019, with petitioner's **Comment/Opposition (On Respondent's Motion for Partial Reconsideration dated 30 August 2019)**[2] filed through registered mail on September 30, 2019 and received by this Court on October 7, 2019. The instant motion is seeking for the partial reversal and setting aside of this Court's *Decision* dated August 14, 2019 and the issuance of an order for the payment of the deficiency final withholding value-added tax (FWVAT) and compromise penalty in the amount of Php20,722,434.59 aside from the deficiency income tax (IT), value-added tax (VAT), and final withholding tax (FWT).

Respondent insists that the imposition of FWVAT on income payments to petitioner for services rendered to Sembcorp Utilities Services, Ltd. (Sembcorp-L), Cascal Services, Ltd. (Cascal), Sembcorp Utilities (Netherlands) NV (Sembcorp-N), and to Graham J. Fairclough is proper

[1] Docket, CTA Case No. 9074, Vol. VI, pp. 2760-2765.
[2] *Id.* at 2782-2787.

considering that the latter entities are non-resident foreign corporations and a non-resident alien, respectively.

Respondent further argues that the imposition of compromise penalty amounting to Php75,000.00 was valid since such was not only for settlement of criminal liability but for certain violations of the 1997 National Internal Revenue Code (NIRC), as amended

On the other hand, petitioner in its Comment/Opposition argues that respondent's arguments in the instant motions were mere replication of the arguments in his Answer and Memorandum.

Petitioner also explains that the payment to Sembcorp-L are for services rendered offshore while the payments for Mr. Fairclough were for per diems and the payment for Cascal and Sembcorp-N were dividends. Hence, not subject to FWVAT.

We deny the motion.

Although the above-cited issues were already thoroughly discussed in the assailed Decision, we would like to emphasize the particular disquisitions pertaining to the cited issues raised by the respondent.

On payments made to Sembcorp-L, this Court found said payment as specialized financial and engineering services and offshore support in relation to petitioner's operational and management responsibilities under its Franchise Agreement with SBMA.

The services made by Semcorp-L were done inside the Subic Special Economic and Freeport Zone (SSEFZ) and the area where the latter operates is considered as a separate custom territory pursuant to Republic Act (RA) No. 7227, as amended by RA No. 9400.

Pursuant to Section 108 of the 1997 NIRC, as amended, the VAT imposed on services applies only to those performed in the Philippines and not outside its territory. Thus, the services rendered by Sembcorp-L inside the SSEFZ were not subject to VAT.

As to payments made to Cascal and Sembcorp-N, this Court found that such payments pertained to payment of cash dividends and dividend is defined as a distribution made by a corporation to its shareholders out of its earnings or profits and payable to its shareholder, either in the form of money or other property.

The 12% VAT under the 1997 NIRC, as amended, is levied on sale, barter, exchange or lease of goods or properties and services in the Philippines and on importation of goods into the Philippines. Thus, VAT is not applicable on said payments.

As to payments made to Mr. Fairclough, this Court found that such pertains to per diem payment for attending petitioner's board meeting and as discussed above, petitioner is located and operating within the area of SSEFZ which is a separate customs territory with the Philippines, hence, not covered by the 12% VAT.

Lastly, on the cancellation of the compromise penalty, Revenue Memorandum Order (RMO) No. 01-90, as amended by RMO No. 19-2007, provides that the penalties therein are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It means that it is imposed only to avoid prosecution for violation of the provisions of the 1997 NIRC, as amended, as ruled in *The Philippines International Fair, Inc. v. The Collector of Internal Revenue et al.*[3]

Further, such rules and regulations required that respondent should secure the consent of the taxpayer to impose said penalty. However, the records on the instant case reveal that petitioner did not consent to the imposition of said compromise penalty. Thus, the imposition of such without the conformity of the petitioner is illegal and unauthorized as pronounced in *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc. et al.*[4]

There being no other new issues or matters raised by the respondent in the instant motion, this Court finds no

[3] G.R. Nos. L-12928 and L-12932, March 31, 1962.
[4] G. R. No. L-35266, January 21, 1991.

compelling reason to reverse the ruling in the assailed decision.

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated on 14 August 2019) is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice