REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2340** *(CTA Case No. 9731)*
-versus-	Present: **DEL ROSARIO, P.J., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
S&WOO CONSTRUCTION PHILIPPINES, INC., *Respondent.*	Promulgated: AUG 0 1 2022 3:55 pm

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RESOLUTION

MODESTO-SAN PEDRO, J.:

Before this Court *En Banc* is petitioner's **Motion for Reconsideration (Re: Decision promulgated 10 December 2021)**, filed on 2 February 2022 ("Motion for Reconsideration"),[1] with respondent's **Comment/Opposition (to the Motion for Reconsideration filed by the Commissioner of Internal Revenue)**, filed on 21 March 2022 ("Comment").[2]

In the Motion for Reconsideration, petitioner alleges that:

1. Under the business judgment rule, the Courts are barred from intruding into the business judgments of the corporation when the same are made in good faith, but this is not applicable when exercising it would unduly prejudice the interest of the government;

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[1] Records, pp. 134-149.
[2] *Id.*, pp. 162-175.

2. Respondent did not remove the input VAT component in the cost of the goods and services, which it purchased, or that of its sub-contractors when it billed its client, SEMPHIL. To allow respondent to claim the input VAT is tantamount to double recovery and unjust enrichment;

3. Only "creditable input taxes" that are "directly attributable" may be refunded. No attributability was established between the input tax on purchases vis-à-vis the zero-rated sales of respondent. This is a claim for refund, and respondent must establish its claim by the quantum of evidence and not by assumption; and

4. A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. To stress, the taxpayer must present convincing evidence to substantiate a claim for refund.

Contrarily, respondent counter-argues the following:

1. Petitioner's allegation that to allow respondent to claim input VAT by questioning the computation of respondent's zero-rated sales from service fees is tantamount to double recovery and unjust enrichment is without basis in fact and in law;

2. Respondent only had VAT zero-rated sales transactions, and in the VAT system, all input VAT will necessarily be attributable to such VAT zero-rated sales transactions; and

3. Reliance by petitioner on the ruling of this Honorable Court in ***Coral Bay Nickel Corporation v. Commissioner of Internal Revenue***[3] is misplaced. The factual milieu of the said case and the instant case are different from each other.

Following a studied review of the arguments, we **DENY** the Motion for Reconsideration for lack of merit.

In ***Ortigas and Company Limited Partnership vs. Judge Tirso Velasco and Dolores V. Molina, and Dolores V. Molina vs. Hon. Presiding Judge, RTC, Quezon City, Br. 105, and Manila Banking Corporation***,[4] the Supreme Court had the occasion to rule in this wise:

[3] CTA EB No. 1910, CTA Case No. 8804, 5 September 2019.
[4] G.R. Nos. 109645 and 112564, Resolution, 4 March 1996.

> "*Effect, and Disposition of*
> *Motion for Reconsideration*
>
> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, ART. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc."

Moreover, in ***H. Harry L. Roque, Jr., et al. v. Commission on Election, represented by Hon. Chairman Jose Melo, et al.***,[5] the Supreme Court *En Banc* ruled that whenever the issues raised in the Motion for Reconsideration have already been addressed and passed upon in the Decision, and the Motion for Reconsideration failed to raise matters which are substantially plausible or compellingly persuasive, enough to lead the Court to rule in favor of the desired course of action, then the Motion for Reconsideration will be denied by the Court, to wit:

> "Petitioners' above contention, as well as the arguments, citations, and premises holding it together, is a rehash of their previous position articulated in their memorandum in support of their petition. They have been considered, squarely addressed, and found to be without merit in the Decision subject hereof. The Court is not inclined to embark on another extended discussion of the same issue again…
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> xxx xxx xxx
>
> While a motion for reconsideration may tend to dwell on issues already resolved in the decision sought to be reconsidered—and this should not be an obstacle for a reconsideration—the hard reality is that petitioners have failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> xxx xxx xxx
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> WHEREFORE, the instant separate motions for reconsideration of the main and intervening petitioners are DENIED."

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[5] G.R. No. 188456, Resolution, 10 February 2010.

This was reiterated in ***Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.***:[6]

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

A perusal of the Motion for Reconsideration would show that the arguments raised therein have already been raised by petitioner in his Petition filed before this Court *En Banc*. As such, these have already been sufficiently passed upon, discussed, threshed out and judiciously resolved in the Decision sought to be reconsidered. The Motion for Reconsideration discloses no cogent reason to disturb the findings and conclusions which this Court made in said Decision.

Applying the judicial pronouncements, above, nothing is left for this Court to do but to deny the same.

WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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6 G.R. No. 159938, Resolution, 22 January 2007.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice