REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2297** *(CTA Case No. 7889)*
-versus-	Present: **DEL ROSARIO, P.J.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
VISAYAS GEOTHERMAL POWER COMPANY, *Respondent.*	Promulgated: AUG 0 1 2022 4:20

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RESOLUTION

MODESTO-SAN PEDRO, J.

For the Court's resolution is petitioner's **Motion for Reconsideration (Re: Decision promulgated 9 March 2022)**, filed on 22 March 2022,[1] with respondent's **Comment [Re: Motion for Reconsideration dated March 21, 2022]**, filed on 25 April 2022.[2]

Petitioner seeks to set aside the Court *En Banc's* Decision ("Assailed Decision"), promulgated on 9 March 2022, the dispositive part of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the present Petition for Review filed by the Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the Amended Decision, dated 4 September 2019, and the Resolution, dated 10 June 2020, both rendered by the Court in Division, are hereby **AFFIRMED**. Meanwhile, respondent's "Comment (Re: Petition for Review dated July 1, 2020) With Motion for Leave of Court" is hereby **DENIED**.

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[1] *EB* Records, pp. 117-127.
[2] *Id.*, pp. 131-147.

SO ORDERED."

In the present Motion for Reconsideration, petitioner avers that the movant in a motion for reconsideration may reiterate the same arguments to convince the court that its ruling was erroneous without rendering the motion for reconsideration as *pro forma.*

Petitioner then proceeded to make an exact reproduction of the 'Arguments/ Discussion' portion of his Petition for Review to the present Motion for Reconsideration. Petitioner prays for the Court *En Banc* to reverse its finding that respondent is entitled to the refund of the amount of ₱11,079,342.33 allegedly representing unutilized input VAT for the calendar year 2007 allegedly attributable to zero-rated sales. Petitioner reiterates the following arguments: (1) only creditable input taxes of a VAT-registered person whose sales are zero-rated are refundable and only if they are a factor in the chain of production; and (2) no attributability was established between respondent's input tax purchases and zero-rated sales.

Petitioner also asserts that respondent has the burden of proving entitlement to the tax refund as refunds are in the nature of tax exemptions which must be construed *strictissimi juris* against the taxpayer.

Meanwhile, respondent points out that there is nothing novel in petitioner's arguments as these are mere reiterations of his previous arguments. Nonetheless, respondent counter-argues that: (1) petitioner belatedly invoked the argument that only creditable input taxes that are attributable to zero-rated sales may be refunded; (2) ***Section 112 of the Tax Code, as amended***, does not require that input taxes subject to the claim be directly attributable to zero-rated sales as it is sufficient that a connection is established whether direct or indirect; and (3) it was able to sufficiently establish its *prima facie* right to refund; hence, the burden to present rebuttal evidence is shifted back to petitioner.

The Court *En Banc* agrees with respondent that the arguments raised in the present Motion for Reconsideration are mere reiterations and amplifications of petitioner's arguments presented in its Petition for Review[3] that have been thoroughly considered, resolved, and passed upon by this Court in reaching the Assailed Decision.

It is well-settled that a motion for reconsideration containing a mere reiteration or rehash of grounds and arguments that have already been considered, weighed, passed upon, and resolved by the court before the Decision sought to be reconsidered is rendered does not need a new judicial

[3] *Id.*, pp. 1-100, with annexes.

determination.[4] There is no further need for the Court to "cut and paste" pertinent portions of the decision or to re-write the *ponencia* in accordance with the outline of the motion for reconsideration.[5] Therefore, there is no necessity to discuss and rule again on these grounds since this would be a useless formality of ritual invariably involving merely a reiteration of the reasons for rejecting the arguments advanced by the movant already set forth in the judgment.[6]

In ***Shangri-la International Hotel Management v. Developers Group of Companies, Inc.***,[7] the Supreme Court pronounced that it is incumbent upon the movant to convince the Court that certain findings or conclusions are contrary to law, to wit:

> "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."
> (Emphasis supplied.)

Given the foregoing, the Court *En Banc* deems it unnecessary to reproduce its discussion in the Assailed Decision on petitioner's reiterated arguments as this Court stands firm with the conclusions reached in the Assailed Decision.

Anent petitioner's claim that the burden of proof rests with respondent as the claimant of tax refund, the Court *En Banc* reiterates for emphasis its disquisition in the Assailed Decision that:

> In ***Republic v. Team (Phils.) Energy Corp.***, the Supreme Court held that when a taxpayer establishes by *prima facie* evidence its right to refund, the CIR should present rebuttal evidence to shift the burden back to the taxpayer.

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[4] People v. Agacer, G.R. No. 177751, 7 January 2013 *citing* People v. Larrañaga, G.R. Nos. 138874-75, 21 July 2005; Madeleine Mendoza-Ong v. Hon. Sandiganbayan, et al., G.R. Nos. 146368-69, 18 October 2004.

[5] Land Bank of the Philippines v. Gallego, Jr., G.R. No. 173226, 31 January 2018 *citing* Social Justice Society (SJS) Officers v. Lim, G.R. No. 187836, 10 March 2015 *and* Ortigas Land Co. Ltd. Partnership v. Judge Velasco, G.R. No. 109645, 4 March 1996.

[6] *Ibid;* People v. Agacer, G.R. No. 177751, 7 January 2013 *citing* People v. Larrañaga, G.R. Nos. 138874-75, 21 July 2005 *and* Ortigas Land Co. Ltd. Partnership v. Judge Velasco, G.R. No. 109645, 4 March 1996.

[7] G.R. No. 159938, 22 January 2007.

The Court in Division determined after a judicious review of evidence on record that respondent established its right to refund. The Court in Division found from respondent's Quarterly VAT Returns for calendar year 2007 that it reported input VAT in the aggregate amount of ₱11,902,576.07 arising from domestic purchases and importation of goods other than capital goods, domestic purchases of services, and services rendered by non-residents. Thereafter, the Court in Division reviewed the supporting documents, which include suppliers' invoices, official receipts, Bureau of Customs Import Entry and Internal Revenue Declarations, and BIR Form Nos. 1600, which were also examined by the Court-commissioned Independent Certified Public Accountant ("ICPA"). Taking into consideration the disallowances flagged by the ICPA and disallowances after the Court in Division's verification of the supporting documents, the remaining valid input VAT is ₱11,092,415.44. The Court in Division then determined whether respondent had output tax liability against which the valid input VAT of ₱11,092,415.44 may be applied or credited. Finding that respondent had no other sales/receipts other than zero-rated sales/receipts for the calendar year 2007, the Court in Division determined that the valid input VAT are necessarily attributable to respondent's zero-rated sales.

Notably, petitioner did not present any evidence on his behalf.

From the foregoing, it is incumbent upon this Court to affirm the findings of the Court in Division for failure of petitioner to provide convincing reason to reverse or modify the assailed Decision and Resolution."
(Citations omitted)

All told, the Court *En Banc* finds no justifiable reason to reverse or modify the conclusions reached in the Assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re: Decision promulgated 9 March 2022)** is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice

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