**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
*Petitioner,*

- versus-

**CE CASECNAN WATER AND ENERGY COMPANY, INC.,**
*Respondent.*

**CTA EB No. 1158**
(CTA Case No. 8446)

Present:

Del Rosario, *PJ*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:

SEP 04 2015
3:44 p.m.

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

# RESOLUTION

**COTANGCO-MANALASTAS, J.:**

For resolution is petitioner's Motion for Reconsideration, filed on April 27, 2015, without respondent's Comment, despite notice.

Petitioner Commissioner of Internal Revenue (CIR) assails the Court *En Banc*'s Decision, dated April 7, 2015, dismissing the petition for review and thereby affirming the decision of the CTA First Division. The CTA First Division partially granted respondent's claim for refund, as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent Commissioner of Internal Revenue is hereby ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner the amount of P15,729,679.92, representing its unutilized

> input VAT incurred for the four quarters of taxable year 2010 which are attributable to its zero-rated sales of generated power to NIA."

Petitioner CIR in its motion for reconsideration argues that respondent failed to substantiate its claim that it is entitled to the refund being prayed for. Respondent failed to comply with the invoicing and accounting requirements laid down in Section 113, 114 and 236 of the NIRC of 1997, as amended, and its implementing regulations under RR 16-2005. In addition, respondent was not able to prove that it has strictly complied with the submission of all supporting and relevant documents provided under Revenue Memorandum Order (RMO) No. 53-98 and other existing rules and regulations to warrant the grant of the application for refund.

Likewise, respondent failed to prove that no other claim for refund has been filed with the Board of Investment, Department of Finance, Special Economic Zones/Freeport Zones as no Certifications from said agencies were neither presented by respondent during the administrative stage nor before the Honorable Court during its presentation of evidence. Hence, failing in this aspect, the application for refund must likewise fall.

Notably, the above arguments were the identical arguments raised by petitioner CIR in its motion for reconsideration before the CTA First Division, and in its petition for review before this Court *En Banc*.

These issues have been extensively discussed and resolved by the CTA First Division and the Court *En Banc* when the respondent's claim for refund was partially granted. Any further discussion will only be unnecessarily repetitive.

**WHEREFORE**, the instant motion for reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

(on official business)
**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

(on official business)
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice