REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1318 (CTA Case No. 8549)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES), INC., Respondent.	Promulgated: MAY 09 2017 3:40 pm

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RESOLUTION

Fabon-Victorino, J.:

For action is the *Motion for Reconsideration* filed by petitioner Commissioner of Internal Revenue (CIR), impugning the Decision dated December 5, 2016 of the Court *En Banc*, the dispositive portion of which reads:

> "**WHEREFORE**, the *Petition for Review* filed by petitioner Commissioner of Internal Revenue on June 22, 2015 is hereby **DENIED**, for lack of merit. Accordingly, the assailed Amended Decision and Resolution dated March 13, 2015 and May 18, 2015, respectively, are **AFFIRMED** *in toto*.
>
> **SO ORDERED.**"

The impugned Decision sustained the ruling of the Court in Division partially granting respondent Maersk Services (Philippines), Inc.'s claim for refund/tax credit in the reduced amount of P5,829,398.90, representing its unutilized input value-added tax (VAT) attributable to its zero-rated sales for June 2009 and the 3rd and 4th quarters of 2009.

Petitioner avers that the application of Section 108(B)(4) of the Tax Code to qualify the sales of services of respondent to A.P. Moller-Maersk A/S for zero-rating may not be determined by the Court *En Banc* as it was raised for the first time by respondent in its Motion for Reconsideration dated December 1, 2014 filed with the Court in Division. For petitioner, the issue should be confined on the applicability of Section 108(B)(2) of the Tax Code with respect to the subject sales of services originally raised in the Petition for Review filed with the Court in Division.

Following petitioner's perception, respondent's sales of services do not qualify for zero-rating under Section 108(B)(2) of the Tax Code as said provision requires, among others, that the recipient thereof is doing business outside the Philippines. Since it was shown that A.P. Moller-Maersk A\S had approximately 1.5% of total sales related to business in the Philippines, it fell short of the said requisite, thus, may not be considered for purposes of zero-rating.

Neither would the subject sales of services qualify for zero-rating under Section 108(B)(4) of the Tax Code for the said provision requires that the recipient of the respondent's services be exclusively engaged in international shipping, which is unavailing for aside from international shipping, A.P. Moller-Maersk A\S is also engaged in gas and oil drilling, terminal and tanker business. Besides, respondent failed to prove that the subject sales of services are attributable to A.P. Moller-Maersk A\S's international shipping business.

Further, the fact that 1.5% of A.P. Moller-Maersk A\S's sales are attributable to business to and from the Philippines and a portion of international shipping business relates to the Philippines means it is engaged in domestic transport operations between Philippine ports taking itself off from being engaged in international shipping.

For respondent however, the instant Motion for Reconsideration is *pro-forma* as it does not raise new grounds for consideration of the Court since the arguments raised therein are mere reiteration of his previous stance which have been fully addressed both by the Court in Division and the *En Banc*, rendering the Decision dated December 5, 2016 final and executory.

Moreover, whether A.P. Moller-Maersk A\S is engaged in other businesses is inconsequential as it was established that respondent's services rendered in favor of A.P. Moller-Maersk A\S were associated to the latter's international shipping operations, hence, the subject services qualify for zero-rating under Section 108(B)(4) of the Tax Code.

While respondent concedes that it raised the issue of the applicability of Section 108(B)(4) of the Tax Code with respect to the subject sales of services in its Motion for Reconsideration dated December 1, 2014 filed with the Court in Division, it asserts that petitioner belatedly raised his objection thereto in the instant Motion, thus, it may not be considered by the Court *En Banc*.

Petitioner likewise failed to establish that A.P. Moller-Maersk A\S is engaged in domestic shipping, claiming that the latter's vessels stop at Philippine ports for unloading of cargoes from abroad and vice-versa, thus, clearly engaged in international shipping. Also, the claim of petitioner that 1.5% of A.P. Moller-Maersk A\S's total sales are related to its business to and from the Philippines and a portion of its international shipping business relates to the Philippines is misleading. The said percentage corresponds to respondent's total sales of services to A.P. Moller-Maersk A\S pertaining to the latter's international shipping operations as borne by the record of the case.

As to whether the instant Motion is *pro-forma,* the Supreme Court in *Manila Properties Corporation vs. CA, et* *al.*[1] declared that mere reiteration of issues already passed upon by the court does not automatically make a motion for reconsideration *pro forma* for what is essential is compliance with the requisites of the Rules.

Petitioner's Motion for Reconsideration lacks merit.

The rule on *pro-forma* motion is enshrined in Section 2 Rule 37 of the Rules of Court, the relevant portion of which reads:

> xxx xxx xxx
>
> A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.
>
> A *pro-forma* motion for new-trial or reconsideration shall not toll the reglementary period to appeal.

A reading of the instant Motion reveals that: 1) it contains the findings[2] of the Court *En Banc* to which petitioner does not agree; and 2) petitioner specifically[3] made reference to the evidence on record and the relevant provisions of law in support thereof. Withal, petitioner complied with the requisites of the rules, thus, it is not *pro-forma.*

On the applicability of Section 108(B)(2) of the Tax Code to determine if the subject sales of service qualify for VAT zero-rating, and not Section 108(B)(4) as it was belatedly raised by respondent before the Court in Division, the general rule is that no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration. Higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[4]

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[1] G.R. No. 125447, August 14, 1998.
[2] *Rollo,* pp. 93-94.
[3] *Ibid.* at pp. 94-99.
[4] *Mendoza, et al. vs. Bautista,* G.R. No. 143666, March 18, 2005.

Basic considerations of due process impel the adoption of this rule.[5] Hence, to determine whether the Court *En Banc* may take cognizance of the issue raised by petitioner, reference must be made to the issues agreed upon by the parties during the proceeding before the Court in Division.

In this regard, a revisit of the parties' Stipulation of Issues[6] submitted to the Court in Division is in order. One of issues relevant to present discussion reads as follows:

> 4. Whether or not Petitioner (respondent) is entitled to a refund in the total amount of PhP7,862,002.84 representing unutilized excess input VAT attributable to zero-rated sales for June 2009 and the 3rd and 4th quarters of 2009.

Verily, there is nothing in the cited stipulation that shows that respondent's claim for input VAT refund is exclusively or solely anchored upon Section 108(B)(2) of the Tax Code as petitioner insists. On the contrary, the issue is all-encompassing that it practically includes pertinent laws applicable for the determination of respondent's entitlement to input VAT refund. In fine, when respondent raised the applicability of Section 108(B)(4) of the Tax Code in relation to the subject sales of services in its Motion for Reconsideration dated December 1, 2014 before the Court in Division, it was well-within the issues jointly outlined and agreed upon by the parties themselves, hence, within the Court's competence to addressed and determine.

Moreover, and as pointed out by respondent, it is way too late for petitioner to raise the said issue which he did not even mention in his Petition for Review before the Court *En Banc.*

Finally, on whether respondent is entitled to the refund sought, suffice it to say that pertinent grounds advanced in the instant Motion are but a reiteration of petitioner's previous arguments which have been meticulously determined and discussed in the impugned Decision dated December 5, 2016. Absence any ground to modify, much

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[5] *Mercado, et al. vs. Spouses Espina,* G.R. No. 173987, February 25, 2013.
[6] Docket (CTA Case No. 8549), Vol. I, p. 297.

more reverse the impugned Decision, petitioner's position must be rejected.

WHEREFORE, the Motion for Reconsideration filed by petitioner Commissioner of Internal Revenue on January 5, 2017 is **DENIED**, for lack of merit. The Decision dated December 5, 2016 is hereby **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice