REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

MINDANAO II GEOTHERMAL PARTNERSHIP,
Petitioner,

– *versus* –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 7899, 7942, & 7960

Members:
BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, JJ.

Promulgated:

JAN 05 2018 2:35 p.m.

x--x

R E S O L U T I O N

BAUTISTA, J:

For resolution are the following:

1. Respondent's Motion for Partial Reconsideration (Re: Decision dated July 25, 2017) ("Respondent's MPR") filed on August 22, 2017; with petitioner's Opposition (to Respondent's Motion for Partial Reconsideration) filed by registered mail on October 13, 2017; and

2. Petitioner's Motion for Partial Reconsideration ("Petitioner's MPR) filed on August 22, 2017; *sans* respondent's comment despite notice, as evidenced by Records Verification Report dated October 24, 2017.

On July 25, 2017, the Court promulgated an Amended Decision[1] ("Assailed Decision"), the dispositive portion of which states:[2]

---

[1] *Records, Vol. 3, CTA Case Nos. 7899, 7942 & 7960,* pp. 1486-1507.

WHEREFORE, premise considered, the Petitions for Review are hereby **GRANTED** but in a modified amount. Respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE MILLION SEVEN HUNDRED SEVENTY ONE THOUSAND FOUR HUNDRED SEVENTY NINE AND 78/100 PESOS (Php1,771,479.78),** representing its creditable input value-added taxes paid and attributed to its effectively zero-rated sales for the first and second quarters of CY 2007.

SO ORDERED.

Respondent's MPR

In its MPR, respondent claims that he was not given the opportunity to act on petitioner's claim, thus no inaction nor decision can be appealed to the Court. Respondent avers that administrative authority must be given opportunity to decide the matter, to act and correct the errors in the administrative forum. Respondent asserts that the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention.

Respondent also assails the Court's finding that petitioner is entitled to refund of alleged unutilized input VAT, considering that petitioner is not the proper party to seek the refund, citing the cases *Contex Corporation vs. Commissioner of Internal Revenue*[3] *("Contex case")* and *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[4] *("Coral Bay case"),* respondent claims that it is petitioner's suppliers who are the proper parties to claim the tax credit and accordingly refund the petitioner of the VAT erroneously passed on to the latter.

On the other hand, petitioner points out that respondent cannot raise new matters not raised in his Answer or in his Petition for Review on *Certiorari* filed before the Supreme Court. Petitioner states that pursuant to *Section 1, Rule 9 of the Rules of Court,* defenses and objections not raised in the Answer are deemed waived. Moreover,

---

[2] *Id.,* pp. 1507-1507.
[3] G.R. No. 151135, July 2, 2004.
[4] G.R. No. 190506, June 13, 2016.

petitioner asserts that the Decision dated November 11, 2013 of the Court *En Banc* has already become final and executory; that in an Entry of Judgment, the First Division of the Supreme Court certified that its Resolution dated June 29, 2015, which resolved that the Court *En Banc* did not commit any reversible error in its Decision and Resolution as to warrant the exercise of the Supreme Court's discretionary appellate jurisdiction, became final and executory on February 18, 2016.

Petitioner counter-argues that the *Contex* and *Coral Bay cases* which were cited by respondent are not applicable in the present case. In the *Contex case,* Contex is registered with the Subic Bay Metropolitan Authority ("SBMA"), it is also registered with the Bureau of Internal Revenue ("BIR") as a non-VAT taxpayer, as a Subic Bay Freeport Enterprise, as such, it is exempt from all local and national internal revenue taxes. Petitioner is a power generation company which is not an SBMA-registered enterprise, it is not exempt from all local and national taxes, it is a VAT-registered entity, and as a VAT-registered entity, it paid the input VAT on its domestic purchases of goods and services directly attributable to zero-rated sales. In the *Coral Bay case,* the Supreme Court held that Coral Bay is a domestic corporation which is registered with the Philippine Economic Zone Authority ("PEZA"), as such, the purchases of goods and services by the petitioner that were destined for consumption within the ecozone should be free of VAT, hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. In the instant case, petitioner is not PEZA-registered, it is a VAT-registered entity and it incurred input VAT from its domestic purchases of goods and services.

Lastly, citing *San Roque Power Corporation vs. Commissioner of Internal Revenue*[5], *citing State Land Investment Corporation vs. Commissioner of Internal Revenue*[6], petitioner maintains that technicalities and legalisms should not be misused by the government to keep money not belonging to it thereby enriching itself at the expense of its law-abiding citizens, when there is no doubt that a taxpayer is entitled to a refund; that the State must lead by its own example of honor, dignity and uprightness. Petitioner also

[5] G.R. No. 180345, November 25, 2009, 605 SCRA 536.
[6] G.R. No. 171956, January 18, 2008, 542 SCRA 114.

cites *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et. al.,*[7] and states that the State should not invoke technicalities to keep money not belonging to it.

Petitioner's MPR

In its MPR, petitioner assails the Court's decision denying its claim for refund or the issuance of TCC amounting to Php2,479,138.93 allegedly for failure to comply with the substantiation requirements. Petitioner cites the case of *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*[8] wherein the Supreme Court recognized that invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (proof of transaction) and the best means to prove the input VAT payments (proof of payment). Petitioner points out that it offered in evidence both the individual invoices issued by petitioner's customers where the amount of the tax is shown as a separate item and the official receipts also issued by its said customers evidencing actual payment of the said invoices by petitioner which included the tax due.

Petitioner avers that the doctrine of *strictissimi juris* should be relaxed when it is clear that a claim for tax refund or TCC has clear legal basis and is sufficiently supported by evidence. Lastly, petitioner maintains that the State should not invoke technicalities to keep money not belonging to it; that no one, not even the State should enrich oneself at the expense of anther; that technicalities and legalisms, however exalted, should not be used by the government to enrich itself at the expense of its law-abiding citizens.

The Court resolves.

Anent respondent's MPR, the Court notes that the issues raised therein, i.e. that he was not given even a single day to perform his duties and that petitioner is not the proper party to file for the tax refund or TCC, were raised for the first time in the instant MPR. The rule is well-settled that points of law, theories, issues and arguments

---

[7] G.R. No. 122480, April 12, 2000, 330 SCRA 507.
[8] G.R. No. 181858, November 24, 2010, 636 SCRA 166.

not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal[9], much more in a motion for reconsideration as in this case, because this would be offensive to the basic rules of fair play, justice and due process.[10] This last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result is a pernicious practice that has consistently been rejected.[11]

Anent petitioner's MPR, petitioner claims that it substantially complied with the substantiation requirements such that the official receipts presented and offered in evidence are duly supported by sales invoices, billing invoice numbers, statement of accounts. Petitioner maintains that it offered in evidence both the individual invoices issued by its customers where the actual amount of the tax is shown as a separate item, as well as the official receipts issued by its customers evidencing actual payment of the said invoices by petitioner which included the tax due; that these, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price and the best means to prove the input VAT payments.

The Court is not convinced.

The Court has consistently held that to have a valid claim for refund, petitioner must comply with the invoicing requirements provided under *Section 11*[12] *of Republic Act No. 9337, amending Section*

---

[9] *Rizal Commercial Banking Corporation vs. CIR*, G.R. No. 168498, April 24, 2007, citing *Multi-Realty Development Corporation v. Makati Tuscany Condominium Corporation*, G.R. No. 146726, June 16, 2006, 491 SCRA 9, 23.

[10] *Rizal Commercial Banking Corporation vs. CIR*, G.R. No. 168498, April 24, 2007, citing *Sta. Rosa Realty Development Corporation v. Amante*, G.R. No. 112526, March 16, 2005, 453 SCRA 432, 478.

[11] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

[12] *Section 11, RA No. 9337* reads as follows:

SEC. 11 Section 113 of the same code, as amended, is hereby further amended to read as follows:

SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -

(A) *Invoicing Requirements.* - A VAT-registered person shall issue:

(1) A *VAT invoice* for every sale, barter or exchange of goods or properties; ***and***

(2) A *VAT official receipt* for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);

113 of the 1997 National Internal Revenue Code ("1997 NIRC"). Said section provides that a VAT-registered person shall issue a VAT invoice for every sale, barter or exchange of goods or properties and/or VAT official receipt shall be issued for every lease of goods or properties, and for every sale, barter or exchange of services.

There is no merit in petitioner's claim that the Supreme Court has recognized in the *Kepco* case that invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling prices and the best means to prove the input VAT payments. The Supreme Court ruled in the *Kepco* case that VAT invoice and VAT receipt should not be confused as referring to one and the same thing and that the law did not intend the two to be used alternatively, thus, we quote:

> In other words, the VAT invoice is the sellers best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyers best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (*proof of transaction*), and the best means to prove the input VAT payments (*proof of payment*). Hence, VAT invoice and VAT receipt should not be confused as

---

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term "**VAT-exempt sale**" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term "**zero-rated sale**" shall be *written or printed prominently on the invoice or receipt;*

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client.

> referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.
>
> Although it is true that the CTA is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of Kepcos claims. Verily, the CTA *En Banc* correctly disallowed the input VAT that did not meet the required standard of substantiation.[13]

Applying the foregoing provision and the *Kepco case* in the case at bar, it is clear that the invoicing requirements for VAT-registered entities that are engaged in sale, barter or exchange of goods or properties and those that are engaged in the sale of services differ. For the former entities, a *VAT invoice* will suffice, while for the latter entities, a *VAT official receipt* is the required proof. The Supreme Court emphasized that these two cannot be used alternatively.

The Court has pored over all the pieces of evidence offered by petitioner and found that: *(1)* the VAT was not separately indicated in the official receipts; and *(2)* it is not supported by an official receipt. It is clear therefore that petitioner failed to comply with the substantiation requirements for its claim for refund/TCC, thus, petitioner's MPR must necessarily fail. It is worthy to stress that the Court of Tax Appeals is a court of record, and that cases filed before it are *litigated de novo*, thus, the claimant should prove every minute aspect of its case.[14]

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration and petitioner's Motion for Partial Reconsideration are hereby **DENIED** for lack of merit. Accordingly, the Amended Decision dated July 25, 2017 is **AFFIRMED** and **UPHELD.**

---

[13] Underscoring ours.
[14] *Commissioner of Internal Revenue v. Philippine National Bank,* G.R. No. 180290, September 29, 2014, 736 SCRA 609.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice