REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

KUEHNE + NAGEL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10216**

Members:

BACORRO-VILLENA, *Acting Chairperson,*
MODESTO-SAN PEDRO*, *and*
CUI-DAVID, ***JJ.***

Promulgated:
OCT 0 7 2024
4:11 p.m.

x - x

RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Reconsideration (of the Decision dated 07 March 2024)"[1] (**MR**) filed on 26 March 2024 *via* LBC, with petitioner Kuehne + Nagel, Inc.'s (**petitioner**'s) Comment (Re: Motion for Reconsideration dated March 26, 2024)"[2] (**Comment**) filed on 30 April 2024.

The MR seeks the reversal of this Court's Decision dated 07 March 2024[3] (**assailed Decision**), granting petitioner's Petition for Review[4] filed on 22 November 2019. The dispositive portion of the assailed Decision reads, thus:

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* Designated as Special Member.
1 Division Docket, Volume III, pp. 1213-1229.
2 Id., pp. 1234-1256.
3 Id., pp. 1165-1203.
4 Id., Volume I, pp. 6-146, with annexes.

> ...
>
> **WHEREFORE**, the foregoing premises considered, the instant Petition for Review filed by petitioner Kuehne + Nagel, Inc. on 22 November 2019 is hereby **GRANTED**. Accordingly, the Formal Assessment Notice dated 14 January 2013, Final Decision on Disputed Assessment dated 17 March 2017, and the Decision of the Commissioner of Internal Revenue dated 10 October 2019 – all issued against petitioner Kuehne + Nagel, Inc. for assessed deficiency internal revenue taxes in the taxable year 2009, are declared **VOID**.
>
> Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **TWO MILLION TWENTY THOUSAND NINE HUNDRED SIXTY PESOS AND EIGHTY CENTAVOS (₱2,020,960.80)**, representing petitioner's erroneously paid income tax, expanded withholding tax, and fringe benefits tax.
>
> The Second Division Clerk of Court is **DIRECTED** to assess and determine the additional docket fees to be paid by petitioner based on the deficiency value-added tax assessment amounting to ONE MILLION SEVENTY-FOUR THOUSAND NINETY-THREE PESOS AND NINETY CENTAVOS (₱1,074,093.90), inclusive of penalties.
>
> Petitioner is likewise **ORDERED TO PAY THE ADDITIONAL DOCKET FEES** mentioned above. Upon receipt of notice of petitioner's compliance therewith, respondent is further **ORDERED TO RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **EIGHT HUNDRED EIGHTEEN THOUSAND FOUR HUNDRED EIGHTY-EIGHT PESOS AND THIRTY-FIVE CENTAVOS (₱818,488.35)** representing petitioner's erroneously paid value-added tax.
>
> **SO ORDERED.**[5]
>
> ...

In its MR, respondent argues that petitioner's due process rights were not violated. According to respondent, the audit team already satisfied the due process requirements after affording petitioner opportunities to explain or seek reconsideration.

Respondent also contends that the Court erroneously ordered it to return to petitioner the amount the latter allegedly paid for its deficiency Value-Added Tax (**VAT**) twice. He or she pointed out that the amount of ₱818,488.35, representing petitioner's erroneously paid VAT in the assailed Decision's dispositive portion is already included in the amount of ₱2,020,960.80, representing petitioner's erroneously paid

[5] Emphasis in the original text.

income tax (**IT**), expanded withholding tax (**EWT**), and fringe benefits tax (**FBT**).

Further, respondent avers that the Court lacks jurisdiction to order the return of petitioner's prior partial payments amounting to ₱2,020,960.80.

Finally, respondent contends that, in the absence of an amended assessment or without the due issuance of a Final Assessment Notice (**FAN**), the Court's recomputation of petitioner's deficiency taxes is unwarranted.

Responding to respondent's arguments, petitioner insists on the former's violation of its due process rights when the Preliminary Assessment Notice (**PAN**) was issued prior to the lapse of the fifteen (15)-day period to file a reply thereto. As a result of this transgression, the assessment against it has necessarily been rendered void, hence the Court could not be faulted for ordering the return of the amounts it had paid (since this is the necessary consequence of such nullity).

Petitioner also echoes its prior argument that the Revenue District Officer (**RDO**) and Revenue Officer (**RO**) that handled its audit for taxable year (**TY**) 2009 considered its payments amounting to ₱2,020,960.80 as payments in full satisfaction of its alleged deficiency tax liabilities for the said TY. For petitioner, the said payment should have served as basis to terminate the audit against it for TY 2009.

We resolve.

After a careful review of petitioner's arguments in the MR, We are still unswayed to vacate the assailed Decision.

First, on the supposed duplicated order for it to return the VAT component of petitioner's purported tax payments (for ₱2,020,960.80), the wording of the assailed order indicates that the amount represented "petitioner's erroneously paid income tax, expanded withholding tax, and fringe benefits tax". However, the records show that the amount used represented respondent's partial payments pursuant to its assessment comprised of amounts intended for alleged deficiency IT, VAT, and FBT (aggregating ₱1,202,472.45), then notably **VAT in the amount of ₱818,488.35.**

Second, on the order for the return of an additional **₱818,488.35**, "**representing petitioner's erroneously paid VAT**", conditioned on the payment of incremental docket fees, We quote below the pertinent discussions from the assailed Decision –

...

PAYMENT OF DOCKET FEE
AS LIEN ON JUDGMENT

Petitioner paid its docket fees on the basis of the Final Decision (that demanded payment totaling ₱231,845,147.94, inclusive of penalties). Pursuant to Section 4(b), Rule 141 of the Rules of Court, as amended, the basis for the legal fees to be paid, as a precursor to filing a case before this Court, shall be the total amount of the disputed tax assessment, inclusive of penalties. We note that the amount used by petitioner as basis excluded the deficiency VAT from this Court's jurisdiction.

It is established that the payment of docket and other legal fees is both mandatory and jurisdictional. The court acquires jurisdiction over the case only upon the payment of the prescribed fees. In line with Section 4(b) of Rule 141 above, We are precluded from granting a relief outside the matter that this Court has acquired jurisdiction over.

Therefore, while We favor the outright return of petitioner's payments from 06 June 2014 intended for its allegedly recomputed deficiency IT, EWT, and FBT, the same cannot be as easily said for the deficiency VAT.

...

As an obstacle to the complete and final resolution of the case at bar, the necessary docket fees corresponding to petitioner's deficiency VAT assessment is lacking. Such absence precludes this Court from granting a complete relief leading to a full and orderly disposition of the case. However, for reasons discussed, We are positioned to have petitioner settle the increment in docket fees, which the latter should meet within a reasonable time.

...

We revisit petitioner's payments *vis-à-vis* the full assessment:

Tax Type Paid	Basic Tax Due	Interest	Total Amount Paid
IT	₱202,167.84	₱168,466.46	₱370,634.30
EWT	357,597.97	314,982.99	671,580.96
FBT	84,994.53	75,262.66	160,257.19
Total payments not considered in the Final Decision	**₱644,760.34**	**₱558,712.11**	**₱1,202,472.45**
Add: VAT	435,992.30	382,496.05	818,488.35
Total payment	**₱1,080,752.64**	**₱941,208.16**	**₱2,020,960.80**

...

Thus, the Second Division Clerk of Court shall assess and collect the incremental docket fees corresponding to the deficiency VAT amounting to ₱1,074,093.90. Such resolves the shortage of this Court's jurisdiction in its final judgment. This likewise entitles petitioner to the return of its payment for recomputed deficiency VAT amounting to ₱818,488.35, provided that petitioner has paid the said additional fees, which upon order of this Court, shall constitute a lien on the judgment in satisfaction of said lien.

Conversely, petitioner is entitled to the remainder of its payments amounting to ₱1,202,472.45, without need of further action.[6]

...

From the above disquisitions, the Court's resolve on the instant case is clear: (1) to order the return of petitioner's payments amounting to ₱1,202,472.45 representing its erroneously paid IT, EWT, and FBT, without need of any further action from it; and, (2) to order the return of petitioner's payments amounting to ₱818,488.35, representing its erroneously paid VAT, after it pays the corresponding additional docket fees. Together, these steps allow petitioner to fully recover the sum of ₱2,020,960.80 it had previously paid, albeit voluntarily, to the Bureau of Internal Revenue (**BIR**) pursuant to a void assessment.

It is worth to recall that, on 06 June 2014, petitioner made payments as shown in the draft BIR Form No. 0605 Payment Forms and signed by RO Emerito G. Rivera (who was assigned to handle the reinvestigation of petitioner's case pursuant to its Letter-Protest[7]), and Officer-in-charge RDO Rosita U. Meniano.[8] Online payment summary screenshots and online payment acknowledgments from the BIR's e-Filing and Payment System (**eFPS**)[9] evidenced these payments, to wit:

Tax	Basic Tax Due	Interest	Total Amount Due
IT	₱202,167.84	₱168,466.46	₱370,634.30
VAT	435,992.30	382,496.05	818,488.35
EWT	357,597.97	314,982.99	671,580.96
FBT	84,994.53	75,262.66	160,257.19
Total	**₱1,080,752.64**	**₱941,208.16**	**₱2,020,960.80**

6 Citations omitted, emphasis and italics in the original text and underscoring supplied.
7 Notice to Taxpayer (re: Letter of Authority No. 18655 dated May 24, 2010) dated 28 February 2013, BIR Records, p. 862.
8 Exhibits "P-6-a" to "P-6-d", Division Docket, Volume II, pp. 569-592.
9 Id.

Moreover, the original tenor of the dispositive portion in the assailed Decision referred to the same subject taxes, aligning with the preceding discussions:

> ...
>
> Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **TWO MILLION TWENTY THOUSAND NINE HUNDRED SIXTY PESOS AND EIGHTY CENTAVOS (₱2,020,960.80)**, representing petitioner's erroneously paid income tax, expanded withholding tax, and fringe benefits tax.
>
> The Second Division Clerk of Court is **DIRECTED** to assess and determine the additional docket fees to be paid by petitioner based on the deficiency value-added tax assessment amounting to ONE MILLION SEVENTY-FOUR THOUSAND NINETY-THREE PESOS AND NINETY CENTAVOS (₱1,074,093.90), inclusive of penalties.
>
> Petitioner is likewise **ORDERED TO PAY THE ADDITIONAL DOCKET FEES** mentioned above. Upon receipt of notice of petitioner's compliance therewith, respondent is further **ORDERED TO RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **EIGHT HUNDRED EIGHTEEN THOUSAND FOUR HUNDRED EIGHTY-EIGHT PESOS AND THIRTY-FIVE CENTAVOS (₱818,488.35)** representing petitioner's erroneously paid value-added tax.[10]
>
> ...

While, admittedly, the Court picked up the amount of ₱2,020,960.80 as the amount of petitioner's erroneously paid IT, EWT and FBT (which the Court ordered to be returned and which represented the totality of petitioner's prior payments) instead of the correct amount of **₱1,202,472.45** (which excludes the VAT component that varied in treatment and was covered by the latter paragraph), the assailed Decision still made the correct particular reference to the portion "*representing petitioner's erroneously paid income tax, expanded withholding tax, and fringe benefits tax*".

As a consequence, to conform to the records and evidence, We are constrained to correct the dispositive portion in the assailed Decision. The portion of the payments previously remitted by petitioner (that is attributable to the void VAT assessment) would have to be paid back by respondent twice, if the Court's order in the *fallo* were to be taken on its

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[10] Emphasis in the original text and underscoring supplied.

face and left in its current state. The said error would unjustly enrich petitioner; thus it is only proper that the same be addressed.

However, as to the remainder of respondent's grounds in his or her MR, *i.e.*, (1) that petitioner's due process rights were not violated; (2) that the Court lacked jurisdiction to order the return of petitioner's prior partial payments; and, (3) that the Court supposedly erroneously considered an unsanctioned recomputation upon petitioner's deficiency tax liability, these consist of arguments already raised previously, considered by this Court, and laid out exhaustively in the assailed Decision. A plain reading of the assailed Decision reveals that the aforementioned grounds had each been specifically addressed.

Thus, We no longer find it worthwhile to make further exposition and rehash our own discussions concerning the legal and factual basis of petitioner's claim. As the Supreme Court held in *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[11]:

> ...
>
> 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.
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> ...

[11] G.R. No. 109645, 04 March 1996.

Furthermore, the Supreme Court in *Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[12] ruled:

> ...
>
> 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.**
>
> ...

It is clear from the above principles that it is the movant's duty to convincingly show grounds for a reconsideration of an assailed judgment or order, or at the least give its previous arguments a fresh perspective in such a way that would warrant a re-examination of the merits of each party. Unfortunately, in the instant MR, respondent had failed to do so. In any case, this Court cannot turn a blind eye to unwarranted gains occasioned by its inadvertence.

WHEREFORE, the foregoing premises considered, respondent's "Motion for Reconsideration (of the Decision dated 07 March 2024)" filed on 26 March 2024 is hereby **PARTIALLY GRANTED**.

Accordingly, in order to rectify the inadvertent errors in the dispositive portion of the Decision dated 07 March 2024, the same is **MODIFIED** to read as follows:

> **WHEREFORE**, the foregoing premises considered, the instant Petition for Review filed by petitioner Kuehne + Nagel, Inc. on 22 November 2019 is hereby **GRANTED**. Accordingly, the Formal Assessment Notice dated

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12 G.R. No. 159938, 22 January 2007; Citation omitted and emphasis supplied.

14 January 2013, Final Decision on Disputed Assessment dated 17 March 2017, and the Decision of the Commissioner of Internal Revenue dated 10 October 2019 – all issued against petitioner Kuehne + Nagel, Inc. for assessed deficiency internal revenue taxes in the taxable year 2009, are declared **VOID**.

Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **ONE MILLION TWO HUNDRED TWO THOUSAND FOUR HUNDRED SEVENTY TWO PESOS AND FORTY FIVE CENTAVOS (₱1,202,472.45)**, representing petitioner's erroneously paid income tax, expanded withholding tax, and fringe benefits tax.

The Second Division Clerk of Court is **DIRECTED** to assess and determine the additional docket fees to be paid by petitioner based on the deficiency value-added tax assessment amounting to ONE MILLION SEVENTY-FOUR THOUSAND NINETY-THREE PESOS AND NINETY CENTAVOS (₱1,074,093.90), inclusive of penalties.

Petitioner is likewise **ORDERED TO PAY THE ADDITIONAL DOCKET FEES** mentioned above. Upon receipt of notice of petitioner's compliance therewith, respondent is further **ORDERED TO RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **EIGHT HUNDRED EIGHTEEN THOUSAND FOUR HUNDRED EIGHTY-EIGHT PESOS AND THIRTY-FIVE CENTAVOS (₱818,488.35)** representing petitioner's erroneously paid value-added tax.

SO ORDERED.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

x - x

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(With due respect, I maintain my CDO)
LANEE S. CUI-DAVID
Associate Justice