REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PAG-ASA STEEL WORKS, INC.,
Petitioner,

- *versus* -

BUREAU OF INTERNAL REVENUE, COMMISSIONER OF INTERNAL REVENUE AND ASSISTANT COMMISSIONER TERESITA M. ANGELES,
Respondents.

CTA EB NO. 2410
(CTA Case No. 9506)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

PAG-ASA STEEL WORKS, INC,
Respondent.

CTA EB NO. 2412
(CTA Case No. 9506)

Present:

Del Rosario, *P.J.*,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David, and
Ferrer-Flores, *JJ.*

Promulgated:

MAR 30 2023

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For the resolution of the Court *En Banc* are the following:

1. Commissioner of Internal Revenue's ("CIR") **"Motion for Partial Reconsideration (Re: Decision dated 13 September 2022)"** filed on September 29, 2022; and

2. Pag-asa Steel Works, Inc.'s ("PSWI") **"Motion for Partial Reconsideration (of the Decision dated September 13, 2022)"** filed on September 30, 2022.

On November 24, 2022, the CIR filed his **Manifestation** stating that he will no longer file a comment to PSWI's Motion for Partial Reconsideration and, instead, he will adopt the arguments raised in its Comment dated March 25, 2021 and Motion for Partial Reconsideration dated September 29, 2022. On November 29, 2022, PSWI filed its **Comments/Opposition to Respondent's Motion for Partial Reconsideration (Dated September 29, 2022)**.

The above Motions both seek partial reconsideration of the Decision of the Court *En Banc* promulgated on September 13, 2022, ("Assailed Decision")[1] affirming the judgment of the First Division ("Court in Division") of this Court in CTA Case No. 9506. The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, the consolidated Petitions for Review are **DENIED**. The Assailed Decision and Resolution in CTA Case No. 9506 are **AFFIRMED**.
>
> **SO ORDERED.**"

The CIR filed his Motion for Partial Reconsideration based on the following ground:

> "THE HONORABLE COURT ERRED IN RULING THAT IT IS IMPROPER FOR THE RESPONDENT BIR TO DISALLOW PETITIONER'S INPUT TAX AS OF JUNE 30, 2014 AND THAT THE AMOUNT OF TAX LIABILITY OF PETITIONER BE CREDITED TO PETITIONER'S ALLOWABLE INPUT TAX AMOUNTING TO P726,205,217.28."

On the other hand, PSWI filed its Motion for Partial Reconsideration based on the ground that:

[1] Court *En Banc*'s Docket, pp. 488-513.

> "The Assailed Decision dated September 13, 2022 upholding the VAT assessments (with modifications) on the accounts of MSK Group Work, Inc., Jelaina's Trading & Construction and M Lav Industrial Gas is erroneous as the documentary evidence presented by the Petitioner as well as the findings of the Court-appointed Independent Certified Public Accountant were again disregarded."

A perusal of the arguments presented by both parties in their respective Motion reveals that they both failed to raise any compelling reason to justify the reversal or even modification of the Court *En Banc*'s findings in the Assailed Decision. The Court *En Banc* thus resolves to deny both Motions for lack of merit.

The Court *En Banc* maintains its position that it is improper for the CIR to disallow PSWI's excess input tax as of June 30, 2014 merely on the ground that the said amount was carried over to succeeding returns after the period of audit. Having found that PSWI has total allowable input tax per return amounting to ₱726,205,217.28, the Court in Division correctly credited the said amount against PSWI's deficiency VAT liability. To be sure, any tax benefit derived by PSWI from the carry-over of excess input tax redounds to that succeeding period and not to the period covered by the subject VAT assessment. Logically, the assessment should be made in that succeeding period.

The Court *En Banc* likewise stands by its ruling that the Court in Division correctly subjected to VAT some of its rebar sales to MSK Group Work, Inc. ("MSK") and SB Construction and Water Treatment Corporation ("SB") because petitioner failed to present sufficient evidence proving that some of the rebars it sold to MSK and SB were actually delivered to an ecozone area, the Court in Division did not err in partially upholding the assessment. In the same vein, the Court *En Banc* maintains its position that in order for petitioner to be credited with the input VAT from its purchase of services, it must present the VAT official receipt issued by its supplier containing all the information required under Section 113(B) of the 1997 NIRC and Section 4.113-1(B) of RR No. 16-05. The fact that Jelaina's Trading and Construction is both a supplier of construction materials and a contractor providing construction services is simply irrelevant. What matters in this case is that the transactions between petitioner and Jelaina's Trading and Construction are in the nature of sale of services which, under the law, shall be duly substantiated by VAT official receipts.

In sum, the Court *En Banc* finds no reason to disturb its ruling in the Assailed Decision.

WHEREFORE, premises considered, the CIR's **"Motion for Partial Reconsideration (Re: Decision dated 13 September 2022)"** filed on September 29, 2022 and the **"Motion for Partial Reconsideration (of the**

Decision dated September 13, 2022)" filed by Pag-asa Steel Works, Inc. on September 30, 2022 are both **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With due respect, I maintain my Concurring and Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice