REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

CLARK WATER CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8865

Members:
Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, *JJ.*

Promulgated:
FEB 13 2017
2:27 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is petitioner's Motion for Reconsideration (Re: Decision dated November 23, 2016) filed by registered mail on December 14, 2016; with respondent's Comment (Re: Petitioner's Motion for Reconsideration dated 14 December 2016) filed on January 23, 2017.

On November 23, 2016, the Court promulgated the assailed Decision, disposing of the case as follows:

> In view of the foregoing, the present Petition for Review is hereby **DENIED**. The assessment issued by respondent against petitioner for taxable year 2010 covering deficiency income tax and VAT is **UPHELD**. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency income tax and VAT in the total amount of **Three Million Eight Hundred Eighty Nine Thousand Five Hundred Seven and 56/100 Pesos (Php3,889,507.56)**, inclusive of the 25% surcharge imposed under *Section 248(A)(1)(3) of the 1997 NIRC*, computed as follows:

TYPE OF TAX		BASIC		25% SURCHARGE		TOTAL
Income Tax	Php	944,706.66	Php	236,176.67	Php	1,180,883.33
Value Added Tax		2,166,899.39		541,724.85		2,708,624.24
TOTAL	**PHP**	**3,111,606.05**	**PHP**	**777,901.51**	**PHP**	**3,889,507.56**

In addition, petitioner is also **ORDERED TO PAY**:

1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency income tax and VAT computed from the dates indicated below until full payment thereof pursuant to *Section 249(B) of the 1997 NIRC:*

TYPE OF TAX		BASIC TAX	DEFICIENCY INTEREST COMPUTED FROM
Income Tax	Php	944,706.66	April 16, 2011
Value Added Tax		2,166,899.39	January 26, 2011

2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the amount of Php3,889,507.56, representing the basic deficiency income tax and VAT and the corresponding 25% surcharge; and on the twenty percent (20%) deficiency interest which have accrued as aforestated in Item (1), computed from December 13, 2013 until full payment thereof pursuant to *Section 249(C) of the 1997 NIRC.*

SO ORDERED.

As provided in the assailed Decision, petitioner claims that being registered as a Clark Special Economic Zone ("CSEZ") enterprise, it is entitled to the preferential tax rate of five percent (5%) in *lieu* of all local and national taxes under *Republic Act No. 7227* and applicable regulations, unless the enterprise breaches the thirty percent (30%) threshold on its sales within customs territory; and that its sales of services within customs territory amounted to Php18,057,494.94 or only seven point sixty-five percent (7.65%) of the total sales. However, the Court found that respondent did not assess petitioner for breach of the thirty percent (30%) threshold, but for failure to pay the corresponding customs duties and taxes for the sales of services outside the CSEZ.

Aside from petitioner's failure to present evidence to refute respondent's claim that the service transactions were made outside the CSEZ, it likewise admitted that its gross receipts from its sales to enterprises outside the CSEZ is in the total amount of Php18,057,494.94. Petitioner likewise failed to refute the adjustments made by respondent on the cost of services and to submit any documentary evidence to disprove such assessment. Having failed to overcome the presumption of correctness of the deficiency income tax assessment, respondent's assessment on deficiency basic income tax was upheld.

With regard to value-added tax ("VAT"), on account of petitioner's admission and failure to refute respondent's finding that the service transactions were made outside the CSEZ, such sale of services were considered as technical importations subject to twelve percent (12%) VAT. In addition, petitioner never presented any documentary evidence in support of its VAT transactions nor any VAT return to overthrow respondent's assessment.

The Court sustained the imposition of the twenty-five percent (25%) surcharge against petitioner under *Section 248(A) of the 1997 NIRC* for petitioner's failure to pay both deficiency income tax and VAT within the time prescribed for their payment in the Final Assessment Notice, and to file any VAT return and pay the tax due thereon on the dates prescribed by law. It, however, invalidated the compromise penalties since its imposition without the conformity of petitioner is illegal and unauthorized.

Petitioner avers that the Court erred in not finding that it is subject to a preferential tax rate of five percent (5%) on its gross income in *lieu* of all national and local taxes under *Republic Act No. 7227* and applicable regulations; and in finding that it is liable to pay surcharge on its alleged deficiency income tax and VAT for calendar year 2010.

On the other hand, respondent counters that petitioner's Motion for Reconsideration is a mere rehash of its arguments in the Petition for Review; that petitioner is liable for deficiency income tax for its failure to pay customs duties and taxes due on its sale of services within customs territory; that sales of petitioner within customs territory are technical importations subject to the twelve percent (12%) VAT; and that petitioner is liable for interest, surcharges and penalties attributable to the deficiency income tax and VAT.

After a careful consideration of the Motion for Reconsideration filed by petitioner, the Court finds that the issues and arguments raised therein are the same ones it raised in its Memorandum, and have been sufficiently passed upon and discussed in the assailed

Decision. For reference, below are petitioner's arguments in its Memorandum, as summarized in the assailed Decision:

> ***Petitioner's Arguments***
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> Petitioner avers that it is subject to a preferential tax rate of five percent (5%) on its gross income in *lieu* of all national and local taxes under *Republic Act No. 7227* and applicable regulations; and that it is not liable for interest, surcharge and compromise penalty.

WHEREFORE, petitioner's Motion for Reconsideration (Re: Decision dated November 23, 2016 is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice