REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MINDANAO II GEOTHERMAL PARTNERSHIP,
Respondent.

CTA EB No. 1777
(CTA Case Nos. 8082 & 8106)

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MINDANAO II GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent

CTA EB No. 1779
(CTA Case Nos. 8082 & 8106)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUL 07 2020
3:51 p.m.

x---x

RESOLUTION

UY, *J*.:

For this Court's resolution are the following:

1) ***MOTION FOR RECONSIDERATION [re: Decision dated August 1, 2019]***[1] filed by Commissioner of Internal Revenue (CIR), petitioner in CTA EB No. 1777, on August 22, 2019, with ***COMMENT [To Commissioner of Internal Revenue's Motion for Partial Reconsideration]***[2] filed by Mindanao II Geothermal Partnership, respondent, on October 14, 2019; and

2) ***Motion for Reconsideration***[3] filed by Mindanao II Geothermal Partnership (M2GP), petitioner in CTA EB No. 1779, on August 28, 2019, without the respondent CIR's comment despite due notice.[4]

In both *Motions,* the CIR and M2GP seek reconsideration and setting aside of the Court *En Banc*'s Decision promulgated on August 1, 2019, denying the consolidated *Petitions for Review* in CTA EB Nos. 1777 & 1779, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the consolidated *Petitions for Review* in CTA EB 1777 & 1779 are **DENIED** for lack of merit. Accordingly, the assailed Decision dated August 9, 2017 and Resolution dated January 12, 2018, both rendered by the Court in Division in CTA Case Nos. 8082 & 8106 are **AFFIRMED**.
>
> **SO ORDERED**."

The CIR's Motion for Partial Reconsideration

In his *Motion for Partial Reconsideration*, the CIR argues that the Court *En Banc* erred in ruling M2GP is entitled to refund of alleged unutilized input Value-Added Tax (VAT). Petitioner reiterates its position that to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. Petitioner asserts that there is nothing in the decision of the Court *En Banc* showing direct attributability of the purchases or input tax to the finished product whose sale is zero-rated.

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[1] EB Docket – Vol. 1, pp. 263 to 269.
[2] EB Docket – Vol. 1, pp. 305 to 316.
[3] EB Docket – Vol. 1, pp. 283 to 297.
[4] EB Docket – Vol. 1, p. 319.

On the other hand, M2GP counter-argues that it is entitled to its claim for tax credit in the amount of ₱220,700.89 as it was able to sufficiently establish that the excess unutilized input taxes were directly attributable to its zero-rated sales; That technicalities and legalisms should not be misused by the government to keep money belonging to it; and that the doctrine of *strictissimi juris* should be relaxed in the present case where M2GP has clearly and sufficiently established by clear evidence its claim for refund or tax credit for its unutilized input tax for taxable year 2008 and in order to give life to the spirit and objectives of the Republic Act (RA) No. 9136. [5]

<u>M2GP's Motion for Reconsideration:</u>

M2GP argues in its *Motion for Reconsideration* that a claim for refund or tax credit at the judicial level, the Rules of Court governs the determination of whether the evidence submitted by a party is sufficient to establish its claim.

M2GP reiterates that an examination of all the offered documentary evidence particularly the offered sales invoices were sufficient to establish M2GP's claim that the VAT was actually paid by M2GP. The offered official receipts supported by corresponding sales invoices or statements of account taken collectively, sufficiently and clearly established that the amount of VAT was actually paid by M2GP; That these supporting invoices where the amount of the VAT was clearly indicated as a separate item, taken together with official receipts, have probative value in establishing that the VAT was actually paid by M2GP.

Allegedly, the cases cited by the Court *En Banc* in its decision are not applicable to the present situation as they pertain to a different set of factual circumstances.

M2GP also contends that denying its claim because the amount of the VAT was not indicated in the ORs (but supported by corresponding sales invoices showing the amount of the VAT as separate item) is a denial based on technicality and not on the basis of the evidence on record.

Lastly, M2GP reiterates that the doctrine of *strictissimi juris* should be relaxed in the present case to give life to the spirit and objectives of RA No. 9136.

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[5] "Electric Power Industry Reform Act of 2001" or also known as the EPIRA Law.

THE COURT *EN BANC*'S RULING

The Court *En Banc* finds the CIR's *Motion for Partial Reconsideration* and M2GP's *Motion for Reconsideration* bereft of merit.

A careful perusal of the CIR's *Motion for Partial Reconsideration* and M2GP's *Motion for Reconsideration* show that the arguments raised therein are rehash and mere reiterations of matters which have already been considered, weighed and exhaustively passed upon by the Court *En Banc* in the assailed Decision, except on one point raised by M2GP which will be discussed below.

M2GP assignment of error is unfounded.

It is M2GP's notion that the cases cited by the Court *En Banc* pertaining to invoicing requirements in the assailed decision are not applicable to the instant case as they pertain to a different set of factual circumstances. M2GP's argues that in the case of *Microsoft Philippines, Inc. vs Commissioner of Internal Revenue*[6] (*Microsoft*), the main issue therein was the failure of *Microsoft* to indicate the word zero-rated on its official receipts. While in the case of *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*[7] (*Eastern Telecommunications*), the claim of *Eastern Telecommunications* was also denied for failure to imprint the "zero-rated" on the face of its official receipts. Also in the case of *Sitel Philippines Corporation vs. Commissioner of Internal Revenue*[8] (*Sitel*), Sitel's claim was also denied considering that its invoice/official receipts were not imprinted with the taxpayer's TIN followed by the word VAT so these would not be considered as VAT invoices/official receipts and would not give rise to any creditable input VAT in favor of Sitel.

Thus, M2GP contends that denying its claim because the amount of the VAT was not indicated in the ORs (but supported by corresponding sales invoices showing the amount of the VAT as separate item) is a denial based on technicality and not on the basis of the evidence on record.

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[6] G.R. No. 180173, April 6, 2011.
[7] G.R. No. 183531, March 25, 2015.
[8] G.R. No. 201326, February 8, 2017.

We do not subscribe to M2GP's argument.

While it is true that the factual antecedents in the abovementioned cases are different from that of the present case, this Court however, merely expounded on the discussion in the assailed Decision as to the mandatory invoicing requirements set forth in the National Internal Revenue Code of 1997, as amended using the *rationale* of the Supreme Court in the said cases.

It is well-settled that courts must be cognizant of the decisions of the Supreme Court because of the doctrine of *stare decisis*. The said doctrine is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[9]

Finding no reversible error to reconsider and modify the said Decision, We shall no longer belabor to repeat the disquisitions and rulings made therein.

WHEREFORE, in light of the foregoing considerations, the *Motion for Partial Reconsideration* filed by the CIR and the *Motion for Reconsideration* filed by M2GP are **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[9] *Amelia D. De Mesa, et. al. vs. Pepsi Cola Products, Inc. et. al.*, G.R. Nos. 153063-70, August 19, 2005.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice