REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

FIRST GEN VISAYAS ENERGY, INC., Petitioner,	**CTA CASE NO. 8781**
	Members: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** and **RINGPIS-LIBAN,** *JJ.*
- versus -	
HON. KIM JACINTO-HENARES, IN HER CAPACITY AS THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 24 2014 2:05 p.m.

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RESOLUTION

This resolves petitioner's "Manifestation with Motion to Withdraw Petition," with Annexes, filed on June 16, 2014; with respondent's "Comment (Re: Manifestation with Motion to Withdraw Petition)" filed on June 18, 2014.

In its "Manifestation with Motion to Withdraw Petition," petitioner, through counsel, praying for the Court to allow the withdrawal of its Petition for Review, states as follows:

> "1. On March 3, 2014, [p]etitioner filed the instant Petition for Review seeking the reversal and setting aside of the deficiency documentary stamp tax assessment issued and finalized in a corresponding Final Decision on Disputed Assessment (FDDA) by [r]espondent against [p]etitioner for calendar year 2009 in the total amount of ₱1,448.52;
>
> 2. The above deficiency documentary stamp tax assessment arose from the alleged failure of the [p]etitioner to pay DST on certain loans which pertain exclusively to advances made in 2009 and prior years;
>
> 3. However, [p]etitioner wishes to manifest that it has already made voluntary payment and settled the stated tax deficiency subject of this Petition last 4 June 2014;

xxx xxx xxx

6. In support of the instant Motion, attached herewith as *Annex 'A'* is a copy of the electronically filed Payment Form (BIR Form No. 0605) evidencing payment of the subject tax due inclusive of surcharge, interest and compromise penalties in the total amount of ₱1,485.09."

On the other hand, in her "Comment (Re: Manifestation with Motion to Withdraw Petition)," respondent, praying for the Court to note her comment and to dismiss the present case with prejudice, states no opposition on the mentioned withdrawal of the Petition for Review.

With the foregoing, Section 2 of Rule 17 of the Revised Rules of Court provides as follows:

"Rule 17
DISMISSAL OF ACTIONS

xxx xxx xxx

SEC. 2. *Dismissal upon motion of plaintiff.* - Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court."

The Court taking into consideration that petitioner has manifested in writing that it had voluntarily paid and settled its deficiency taxes subject of the present case; that respondent has no objection on the withdrawal of the Petition for Review; and after a perusal of the records, finds merit on the "Motion to Withdraw Petition."

WHEREFORE, petitioner's "Manifestation with Motion to Withdraw Petition" is hereby **GRANTED**. The Petition for Review is hereby considered **CLOSED AND TERMINATED**.

Accordingly, the "Formal Offer of Evidence (Petitioner's Motion for Suspension of Collection of Taxes and/or Issuance of Temporary Restraining Order)," filed on May 26, 2014, and the "Comment (Re: Petitioner's Formal Offer of Evidence)," filed on May 30, 2014, are hereby rendered **MOOT**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

(On Official Business)
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice