REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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ORICA PHILIPPINES, INC,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2336
(CTA Case No. 9717)

Present:

DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

Promulgated:

OCT 13 2022 4:16 pm

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RESOLUTION

UY, J.:

For resolution is petitioner's *Motion for Reconsideration (Re: 31 May 2022 Decision of the Honorable Court of Tax Appeals – En Banc)*[1] filed on June 17, 2022, with respondent's *Comment/ Opposition (to Petitioner's Motion for Reconsideration)*[2] filed on August 1, 2022.

In the said *Motion*, petitioner prays that: (1) the Court *En Banc* give due course to the instant *Motion*; (2) reverse the assailed *Decision* dated May 31, 2022, and the *Decision* dated February 4, 2020 and the *Resolution* dated September 1, 2020 rendered by the First Division of this Court; (3) grant petitioner's claim for refund

[1] EB Docket, pp. 221 to 234.
[2] EB Docket, pp. 243 to 251.

and/or issuance of tax credit certificate (TCC) in the aggregate amount of ₱14,957,902.88, representing its excess and unutilized input value-added tax (VAT) credits for the 3rd quarter of fiscal year (FY) ending September 30, 2015; and (4) order respondent to refund the aforementioned amount in favor of petitioner. The dispositive portion of the assailed *Decision* reads:

***Decision* dated May 31, 2022:**

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit.
>
> The *Decision* dated February 4, 2020 and the *Resolution* dated September 1, 2020 rendered by the First Division of this Court in CTA Case No. 9717 are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

Petitioner's arguments:

In its *Motion*, petitioner reiterates its position that it was able to satisfactorily prove that its excess and unutilized input taxes were not applied against any output VAT liability nor included in the VAT returns filed in the succeeding periods.

Petitioner echoes its explanation in its *Petition for Review* that while the input tax credits from the previous period in the Amended Quarterly VAT Return for the 4th quarter of FY 2015 shows the amount of ₱198,907,971.71 instead of ₱183,950,068.83, or a difference of ₱14,957,902.88, the difference pertains to the amount sought to be refunded which was inadvertently added to the input tax credits carried over from the previous period.

Nonetheless, petitioner points out that for the input tax credits to be carried over to the next period, the Amended Quarterly VAT Return for the 4th quarter of FY 2015 shows the amount of ₱175,982,534.30 but the amount of input tax credits carried over in the Amended Quarterly VAT Return for the 1st quarter of FY 2016 was only ₱92,961,961.39.

As such, petitioner asserts that the input VAT of ₱14,957,902.88 sought to be refunded was correctly removed from the total input tax credits carried over to the subsequent periods because ₱83,020,572.91 (₱175,982,534.30 less ₱92,961,961.39) worth of input tax was removed from the ₱175,982,534.30 ending balance of the input tax credits to be carried over to the succeeding period. The ₱83,020,572.91 is composed of the ₱14,957,902.88 sought to be refunded plus ₱68,062,670.03 unsupported input taxes incurred from the 4th quarter of FY 2015 to the 1st quarter of FY 2016. Hence, there is no doubt that the ₱14,957,902.88 sought to be refunded was correctly removed by petitioner in the total input tax credits carried over to subsequent periods, albeit lumped with other adjustments.

Meanwhile, petitioner moves that the Court *En Banc* take judicial notice of the testimony of Teresa S. Gonzales (or Ms. Gonzales) considering that in this case, taking judicial notice is mandatory, and not discretionary, on the Court's part, pursuant to Section 1, Rule 129 of the Revised Rules of Court. Petitioner claims that a court will take judicial notice of the files of related cases in the same court, pursuant to *Republic of the Philippines, represented by the Director of Lands v. Hon. Court of Appeals and Josefa Gacot*[3] (*Republic* case).

Thus, pursuant to the interpretation of the rules on judicial notice and the trend of liberal interpretation of rules of procedure, petitioner avers that the Court *En Banc* should take mandatory judicial notice of the files of related cases in the same court. Accordingly, the Court *En Banc* should take mandatory judicial notice of Ms. Gonzales' testimony in CTA Case No. 9843 explaining the composition of the ₱83,020,572.91 worth of input tax that was removed from the ₱175,982,534.30 ending balance of the input tax credits to be carried over to the 1st quarter of FY 2016, which is material to the issue in the present case.

Respondent's counter-arguments:

Respondent counter-argues that the Court correctly ruled in its Decision that petitioner may only have its case reopened before a judgment is rendered on the case. In this case, petitioner waited for the Decision of the Court *a quo* before praying that it be allowed to

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[3] G.R. No. 119288, August 18, 1997.

reopen the case for presentation of additional evidence citing the excuse that it merely relied on the findings and comparison done by the Independent Certified Public Accountant, leading to the failure to present documents required to present its case.

Moreover, respondent submits that petitioner has no ground to ask for such reopening considering that petitioner would have found the alleged errors or inaccuracies committed by the Independent Certified Public Accountant (ICPA) had it exercised due diligence in reviewing the case.

Respondent also avers that the Court *En Banc* cannot take judicial notice of the testimony in CTA Case No. 9843 where the detailed composition of the ₱83,020,572.91 was allegedly "fully explained". Respondent emphasizes that cases filed before the Court of Tax Appeals are to be tried *de novo*. Should the Court *En Banc* take judicial notice of the testimony in CTA Case No. 9843, respondent would have been deprived of her right to cross-examine the witness.

Respondent further asserts that petitioner is not entitled to the refund claim because it did not submit a complete/accurate account of its 3rd Quarterly VAT Returns reflecting the claim in the amount of ₱14,957,902.88.

Moreover, even assuming that petitioner was able to prove that the amount carried forward from the previous period does not contain the amount sought to be refunded, petitioner failed to file its Amended VAT Return for the 3rd quarter via Electronic Filing and Payment System within fifteen (15) days from the date of manual filing which is required under Revenue Memorandum Circular No. 43-2008.

In addition, the signatory of the Amended Return was not duly authorized to sign petitioner's return, in violation of Section 52 of the National Internal Revenue Code (NIRC) of 1997, as amended. Petitioner also failed to submit original sales invoice/receipts, and to fully account sales official receipts/invoices vis-à-vis sale per VAT returns, in violation of Sections 113 and 112 of the NIRC of 1997, as amended, respectively.

THE COURT *EN BANC*'S RULING

Petitioner's *Motion* lacks merit.

After a careful examination and consideration of petitioner's arguments in its *Motion*, We note that the same are mere reiteration of matters which have already been considered, weighed and resolved in the assailed *Decision*. Thus, we shall not belabour, in this *Resolution*, the disquisitions made therein.

Petitioner failed to satisfactorily prove that its excess and unutilized input taxes were not applied against any output VAT liability nor included in the VAT returns filed in the succeeding periods.

As extensively discussed in the assailed *Decision*, both the ₱83,020,572.91 worth of input tax which was removed from the ₱175,982,534.30 ending balance of the input tax credits to be carried over to the succeeding period in the Amended Quarterly VAT Return for the 4th quarter of FY 2015, and the ₱92,961,961.39 which was actually carried over in petitioner's Amended Quarterly VAT Return for the 1st quarter of FY 2016, are large enough to include the ₱14,957,902.88 sought to be refunded by petitioner.

Consequently, even if a lower amount of input tax was carried over to the 1st quarter of FY 2016, it still cannot be ascertained whether the ₱83,020,572.91 worth of input tax which was removed from the ₱175,982,534.30 ending balance of the input tax credits to be carried over to the succeeding period actually includes the ₱14,957,902.88 being claimed for refund. The ₱14,957,902.88 could still form part of the ₱92,961,961.39 which was actually carried over in petitioner's Amended Quarterly VAT Return for the 1st quarter of FY 2016, which could be applied to petitioner's output VAT liability in the said quarter and the succeeding quarters.

Moreover, while it is stated in the ICPA Report that the ₱83,020,572.91 worth of input tax which was removed from the ₱175,982,534.30 ending balance of the input tax credits to be carried over to the succeeding period is composed of the ₱14,957,902.88 sought to be refunded plus the ₱68,062,670.03 which was deducted from the input VAT to be carried over from the 4th quarter of 2015 to the 1st quarter of 2016, the ICPA made a statement, with reference to the ₱68,062,670.03, stating that *"no supporting documents were presented to us"*. Without showing the breakdown of the ₱68,062,670.03, it can easily be claimed that said amount, together with the ₱14,957,902.88 sought to be refunded, comprises the ₱83,020,572.91 which was removed from the ₱175,982,534.30.

Thus, We maintain Our finding in the assailed *Decision* that petitioner failed to satisfactorily prove that its excess and unutilized input taxes were not applied against any output VAT liability nor included in the VAT returns filed in the succeeding periods.

The Court En Banc cannot take mandatory judicial notice of the testimony of Teresa S. Gonzales regarding matters raised/ explained in CTA Case No. 9843.

Petitioner argues that the Court *En Banc* should take mandatory judicial notice of Ms. Gonzales' testimony in CTA Case No. 9843, explaining the composition of the ₱83,020,572.91 worth of input tax that was removed from the ₱175,982,534.30 ending balance of the input tax credits to be carried over to the 1st quarter of FY 2016, considering that courts shall take judicial notice of the files of related cases, pursuant to Section 1, Rule 129[4] of the Revised Rules of Court and the *Republic* case.

Petitioner is mistaken.

Granting *arguendo* that the testimony of Ms. Gonzales in CTA Case No. 9843 may be material in resolving the issue in the present case, the Court *En Banc* cannot take mandatory judicial notice of Ms. Gonzales' testimony in CTA Case No. 9843, even if said case is related to the instant case.

[4] SECTION 1. *Judicial Notice, When Mandatory.* — **A court shall take judicial notice, without the introduction of evidence**, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, **official acts of** the legislative, executive and **judicial departments of the National Government of the Philippines**, the laws of nature, the measure of time, and the geographical divisions.

As explained in the assailed *Decision*, **the general rule is that courts are <u>not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge</u>**. However, this rule is subject to the exception that **<u>in the absence of objection</u>** and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of the case filed in its archives as read into the records of a case pending before it, when with the knowledge of the opposing party, reference is made to it, by name and number or in some other manner by which it is sufficiently designated. Thus, **<u>for said exception to apply, the party concerned must be given an opportunity to object before the court could take judicial notice of any record pertaining to other cases pending before it</u>**.[5]

Thus, although CTA Case No. 9843 is related to the instant case, the Court *En Banc* cannot take mandatory judicial notice of Ms. Gonzales' testimony therein because there is a continuing objection on the part of respondent to the Court *En Banc's* taking judicial notice thereof.

In sum, the Court *En Banc* finds no compelling reason to reconsider, modify, or reverse the assailed *Decision*.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration (Re: 31 May 2022 Decision of the Honorable Court of Tax Appeals – En Banc)* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[5] *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(I reiterate my Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice