

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

EMERSON ELECTRIC (ASIA) CTA CASE NO. 9348
LIMITED - ROHQ,

Petitioner, Members:

-versus-

Bautista, Chairperson
Fabon-Victorino, and
Ringpis-Liban, II.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

OCT 24 2016

3:14 p.m.

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R E S O L U T I O N

For resolution is petitioner's Omnibus Motion to Withdraw Petition for Review (with Motion to Defer Pre-Trial Conference) filed on October 14, 2016; with respondent's Manifestation filed on October 19, 2016.

On July 20, 2016, the Court set the Pre-Trial Conference on October 25, 2016 at 9:00 a.m., and ordered the parties to file with the Court and serve upon the adverse party their respective pre-trial briefs at least three (3) days before the date of pre-trial.

On one hand, petitioner avers that it filed with the Bureau of Internal Revenue ("BIR") an application for tax refund of its unutilized VAT input taxes in the total amount of Php84,464,653.89; that its application was partially granted in the amount of Php21,661,385.83 in the form of a Tax Credit Certificate ("TCC"); that it filed the instant Petition for Review for the remaining balance of its claim in the amount of Php62,803,268.06; that due to financial exigencies, it decided to utilize the TCC issued by the BIR, hence, it moves for the withdrawal of the instant Petition for Review; and that it requests for the Court to cancel its order dated July 20, 2016 setting the Pre-Trial Conference and defer the same until such time that the Court has considered and resolved its Omnibus Motion.

On the other hand, respondent interposed no objection to the withdrawal of the present Petition for Review.

The Court finds merit in petitioner's Omnibus Motion.

Section 3, Rule 50 of the Revised Rules of Court provides as follows:

RULE 50
DISMISSAL OF APPEAL

xxx

xxx

xxx

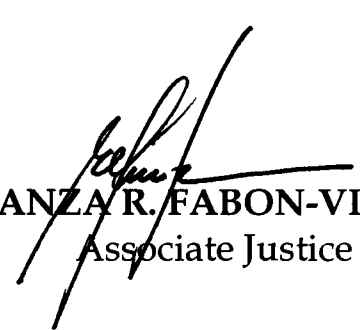
SEC. 3. *Withdrawal of appeal.* - An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court.¹

Considering that respondent has yet to file his brief, as ordered by the Court on July 20, 2016, petitioner still has the right to withdraw the present Petition for Review.

WHEREFORE, petitioner's Omnibus Motion to Withdraw Petition for Review (with Motion to Defer Pre-Trial Conference) is hereby **GRANTED**. Accordingly, the Petition for Review is hereby considered **WITHDRAWN** and the case is hereby considered **CLOSED** and **TERMINATED**. Let the Order issued by the Court dated July 20, 2016 be **CANCELLED** and **SET ASIDE**, and the Pre-Trial Conference set on October 25, 2016 at 9:00 a.m. be **CANCELLED**.

SO ORDERED.


LOVELL R. BAUTISTA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

¹ Underscoring ours.