REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KEPCO PHILIPPINES CORPORATION,
Petitioner,

-versus-

THE CITY OF MAKATI,
Respondent.

C.T.A. EB No. 344
(C.T.A. A.C. No. 23)

Present:
Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

Promulgated:
JAN 2 8 2008 GVApolinario 2:45 p.m.

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RESOLUTION

This is an appeal, by way of Petition for Review with the Court *en banc* pursuant to Section 11 of Republic Act No. 9282, from the Decision dated August 24, 2007 promulgated by the Second Division of the Court of Tax Appeals and its Resolution dated November 14, 2007 denying petitioner's Motion for Reconsideration in C.T.A. A.C. No. 23 entitled *"Kepco Philippines Corporation versus The City of Makati"*.

The decretal portion of the assailed Decision reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit."

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The foregoing ruling was affirmed by the Second Division of this Court in its Resolution dated November 14, 2007.

On page two of its Petition for Review, filed on December 12, 2007, petitioner stated the material dates involved in this appeal as follows:

> "On September 5, 2007, petitioner received a copy of the 2nd Division of this Honorable Court's Decision promulgated on August 24, 2007, denying its prayer that it be classified as a manufacturer for purposes of paying the required local business tax. From the said Decision, petitioner filed a Motion for Reconsideration dated September 19, 2007 seeking the reversal of the said Decision. In a Resolution dated November 14, 2007, the 2nd Division of this Honorable Court denied petitioner's motion for reconsideration, a copy of which was received by the petitioner on November 27, 2007. Under the Revised Rules of the Court of Tax Appeals, " A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution" Further,"an appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal". Hence, the filing of the instant petition is well within the fifteen days (15) day reglamentary period prescribed under the Revised Rules of Court of Tax Appeals."

From the foregoing statement of material dates as alleged by the petitioner, it can be seen that the appeal was filed within the fifteen-day period allowed by Rule 43 of the Rules of Court. However, after examination of the records of the case, C.T.A. AC No. 23, the Notice of Resolution issued by the Court to which a copy of Resolution dated November 14, 2007 was attached, proved that the said Resolution was received by the petitioner on November 22, 2007 and not on November

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27, 2007. In addition, the petitioner failed to attach evidence to support its allegation that the Resolution dated November 14, 2007 was duly received on November 27, 2007.

Since the Resolution was received on November 22, 2007, the petitioner has fifteen (15) days to file a Petition for Review or has until December 7, 2007. In this regard, the petitioner failed.

WHEREFORE, the Petition for Review filed by the petitioner on December 12, 2007 is hereby **DISMISSED** for having been filed beyond the reglementary period. Accordingly, the assailed Decision and Resolution dated August 24, 2007 and November 14, 2007, respectively, have become final and executory.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice