REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

HALLIBURTON WORLDWIDE LIMITED - PHILIPPINE BRANCH, *Petitioner,*	**CTA *EB* NO. 2022** *(CTA Case No. 9449)*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2042** *(CTA Case No. 9449)*
	Present:
-versus-	**DEL ROSARIO, P.J.,** **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
HALLIBURTON WORLDWIDE LIMITED - PHILIPPINE BRANCH, *Respondent.*	Promulgated: JUN 0 9 2021 3:35 pm

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is Halliburton Worldwide Limited-Philippine Branch's ("HWL") ***Motion for Reconsideration (Re: Decision dated October 29,***

2020) (hereinafter referred to as "Motion"), posted on 24 November 2020,[1] *sans* the Commissioner of Internal Revenue's ("CIR") Comment/Opposition.[2]

In its Motion, HWL contends that the Court *En Banc* erred in ruling that it was not able to prove that its services to Renewable Energy ("RE") Developers qualify for Value-Added Tax ("VAT") zero-rating. It opines that its failure to present the RE Developer's Board of Investments ("BOI") Registration and Department of Energy ("DOE") Certificate of Endorsement was never raised as an issue during trial and on appeal. On this basis, it contends that it was deprived of the opportunity to address the contention and to present the necessary documents in Court.

HWL avers that the ruling of the Court *En Banc* is contrary to this Court's Decisions in ***Philippine Geothermal Production Company, Inc. v. CIR ("PGPCI Case")***[3] and ***BJ Well Services Company (Philippines), Inc. v. CIR ("BJ Case")***.[4] It alleges that in these cases, the Court of Tax Appeals ("CTA") ruled that the DOE Certificate of Registration is sufficient proof of the RE Developer's entitlement to the fiscal incentives under ***R.A. No. 9513***.[5]

It also cites ***Hedcor Inc. v. CIR ("Hedcor Case")***,[6] where the CTA allegedly ruled that an entity shown to be a domestic corporation operating as an RE facility should be regarded as an RE Developer entitled to the incentives granted by ***R.A. No. 9513*** even without the need for a DOE Certificate of Registration.

HWL opines that since it merely supplies services to RE Developers, the mandate under ***Part III, Rule 5, Section 18 of Department Circular No. DC2009-05-0008 (hereinafter referred to as "IRR")***[7] should not be made applicable to it. HWL insists that it has the right to rely on the face of the DOE Certificate of Registration considering the notation stated on its face which provides that it "shall serve as the basis of entitlement to incentives of [the RE Developer]".

Corollary, HWL submits with the Motion a copy of Energy Development Corporation's ("EDC") (one of its RE Developer clients) BOI Registration.

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[1] HWL filed its Motion within 15 days from its receipt of the assailed Decision on 9 November 2020. Hence, this Motion was timely filed.
[2] Court's Records Verification Report, dated 16 February 2021, *Rollo*, p. 268.
[3] CTA *EB* Case No. 1894, 21 November 2019.
[4] CTA Case No. 8859, 8 February 2017.
[5] An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes (Renewable Energy Act of 2008), 16 December 2008.
[6] CTA *EB* Case No. 1836, 5 August 2019.
[7] Rules and Regulations Implementing Republic Act No. 9513, 25 May 2009.

Likewise, it posits that the duly filed BIR Form No. 1600 already constitutes sufficient evidence in proving payment and remittance of withholding VAT for services rendered in the Philippines by non-resident individuals. It reiterates that the presentation of the Payment Confirmation Receipts is not required under ***Revenue Regulation Nos. 8-02***,[8] and ***16-05***.[9]

Notwithstanding its argument, HWL contends that copies of its Payment Confirmation Receipts had already been filed with the Court in Division together with its Omnibus Motion (1) For Partial Reconsideration (Re: Decision dated October 18, 2018); (2) For Reopening of Trial ("Omnibus Motion"). Hence, it asks the Court *En Banc*, in the interest of substantial justice and fair play, to consider these documents in resolving the herein case, or in the alternative, to order the reopening of trial and allow it to formally present the BOI Registration, DOE Certificate of Endorsement and Payment Confirmation Requests.

After much consideration of the arguments raised by HWL, the Court *En Banc* finds the same bereft of merit.

Contrary to HWL's argument, the Supreme Court in the case of ***Kulas Ideas & Creations et., al v. Alcoseba et., al.***[10] had already ruled that the courts are "imbued with sufficient authority and discretion to review matters not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice".[11]

Furthermore, ***Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals***[12] empowers this Court to resolve any related issues necessary to achieve an orderly disposition of the case, to wit:

> "SECTION. 1. Rendition of judgment. - xxx.
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

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[8] Amending Further Pertinent Provisions of Revenue Regulations No. 7-95, as amended, with respect to the Time of Filing of Quarterly VAT Returns; Contents and Submission of Quarterly Total of Monthly Sales and Purchases Per Supplier or Customer, and Providing for the Penalties and Effect of Non-Submission Thereof; and Clarifying Further the Mode of Remittance of VAT Due From Non-Residents, 13 June 2002.
[9] Consolidated Value-Added Tax Regulations of 2005, 1 September 2005.
[10] G.R. No. 180123. 18 February 2010.
[11] *Ibid.*
[12] A.M. No. 05-11-07-CTA, 22 November 2005.

In this case, the Court *En Banc* cannot ignore HWL's failure to present its clients' BOI Registration and DOE Certificate of Endorsement considering the mandate of ***Section 26, Chapter VII of R.A. No. 9513*** and ***Part III, Rule 5, Section 18 of the IRR***, to wit:

> "Section 26. Certification from the Department of Energy. – **All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy Management Bureau**.
>
> The Department of Energy, through the Renewable Energy Management Bureau shall issue said certification fifteen (15) days upon request of the renewable energy developer or manufacturer, fabricator or supplier.
>
> **Provided, That the certification issued by the Department of Energy shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned**.
>
> SECTION 18. Conditions for Availment of Incentives and Other Privileges. —
>
> A. Registration/Accreditation with the DOE
>
> **For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the DOE, through the Renewable Energy Management Bureau (REMB). The following certifications shall be issued:**
>
> (1) **DOE Certificate of Registration — issued to an RE Developer holding a valid RE Service/Operating Contract.**
>
> For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.
>
> The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.
>
> Any investment added to existing RE projects shall be subject to prior approval by the DOE.
>
> (2) DOE Certificate of Accreditation — issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.

B. Registration with the Board of Investments (BOI)

The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOl, on the basis of the certification issued by the DOE.

C. Certificate of Endorsement by the DOE

RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a **Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis**.

The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; Provided, That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.

xxx xxx xxx

RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment who comply with the above requirements shall be deemed in good standing and shall therefore be qualified to avail of the incentives as provided for in the Act and this IRR."[13]

The above legal pronouncements are clear and admit no exception that the entitlement of an RE Developer to avail of the fiscal incentives under ***R.A. No. 9513*** is hinged on the condition that it was able to secure the DOE Certificate of Registration, BOI Registration, and DOE Certificate of Endorsement. This fact is evident with the above-quoted provisions.

Considering the unequivocal language of ***R.A. No. 9513*** and the ***IRR***, HWL cannot claim that it was deprived of the opportunity to present the RE Developers' BOI Registration and DOE Certificate of Endorsement, more so since these requirements have been imposed as early as May 2009 or at least five (5) years before HWL's transactions with the RE Developers took place.

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[13] Emphasis Supplied.

Likewise, the Court *En Banc* finds HWL's reliance on the ***PGPCI Case***, ***BJ Case***, and ***Hedcor Case*** erroneous. As discussed by the Supreme Court in ***San Roque Power Corp. v. Commissioner of Internal Revenue***,[14] only final Decisions of the Supreme Court are considered binding precedents which neither include decisions of lower courts or minute resolutions of the Supreme Court, to wit:

> We further held in said case that Article 8 of the Civil Code enjoins adherence to judicial precedents. **The law requires courts to follow a rule already established in a final decision of the Supreme Court. Contrary to the petitioner's view, the decisions of the CTA are not given the same level of recognition.**

Furthermore, nowhere in the ***PGPCI Case***, ***BJ Case***, and ***Hedcor Case*** did the CTA make a pronouncement dispensing with the presentation of the BOI Registration and DOE Certificate of Endorsement. Neither did it categorically state that the DOE Certificate of Registration, alone, is sufficient in order to prove entitlement to VAT zero-rating under ***R.A. No. 9513***.

Although the Court *En Banc* acknowledges the observation of HWL that the BOI Registration and the DOE Certificate of Endorsement were not discussed in these cases, the issues in the same were different from the matters considered herein. Hence, the CTA in these pronouncements did not necessitate the discussion of the other requirements.

In the ***PGPCI Case***, the contended issue was about PGPCI's failure to present the DOE Certificate of Registration. Meanwhile, in the ***Hedcor Case***, the point of argument was the applicability of ***R.A. No. 9513*** in the prosecution of the taxpayer's claim for refund.

The allegation of HWL that the CTA in the ***Hedcor Case*** dispensed with the requirement of securing the necessary certifications is without basis. It is clear from the Resolution[15] issued in the ***Hedcor Case*** that the Court acknowledged the importance of procuring a DOE Certificate of Registration before an RE Developer can be entitled to the incentives under ***R.A. No. 9513***.

Neither can the Court *En Banc* subscribe to HWL's argument that the BIR Form 1600, without the corresponding Payment Confirmation Receipts, constitutes sufficient proof of payment and remittance of withholding VAT.

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[14] G.R. No. 203249, 23 July 2018.

[15] Hedcor Inc., v. CIR, CTA *EB* Case No. 1836, 3 February 2020.

As found by the Court in Division, the BIR Form 1600 submitted by HWL does not indicate the amount it actually remitted/paid to the Bureau of Internal Revenue ("BIR") and the date when the tax was paid. Without this vital information, the Court has no way of ascertaining HWL's compliance with the Tax Code and Tax Regulations.

Further, the Court *En Banc* cannot find support in HWL's contention asking to consider the Payment Confirmation Receipts and EDC's BOI Registration which were only attached in its Omnibus Motion and Motion, respectively. As explained in length in the assailed Decision, the Court may only consider evidence not duly offered during trial when the same had been identified by a witness.

However, even assuming that the Court *En Banc* does consider the Payment Confirmation Receipts and EDC's BOI Registration, HWL will still not be entitled to refund. This is so as HWL was not able to present EDC's DOE Certificate of Endorsement and Maibarara Geothermal, Inc.'s ("MGI") BOI Registration and DOE Certificate of Endorsement, which, as discussed above, are prerequisites to its claim for refund

Also, the Court *En Banc* cannot grant HWL's prayer to reopen trial. To reiterate, the Court may only reopen trial in the existence of any of the following circumstances: (a) if there is fraud, accident, mistake or excusable negligence impairing the rights of the aggrieved party; or (b) on account of newly discovered evidence.

In this case, HWL failed to prove that its situation falls under any of the aforementioned circumstances. In fact, it did not even explain why it failed to formally offer these pieces of evidence. It was only when the Court in Division rendered its unfavorable decision that HWL moved for the reopening of trial. This action clearly proves that the pieces of evidence it additionally intends to present constitute forgotten evidence.

As ruled in ***Dee v. Hortenciana, et., al.***,[16] courts are precluded from relaxing the rules of procedure, even on the ground of substantial justice, if the party asking for the reopening of trial failed to prove much less explain that it observed due diligence in presenting evidence, to wit:

> "Lastly, the Court cannot simply relax the rules of procedure and allow the presentation of forgotten evidence notwithstanding that the petitioner now insists that doing so will serve the highest interest of justice. Although litigation is not a game of technicalities in which the better tactician wins, we should stress that the rules of procedure have a role to play in insuring that litigations are conducted in a just, speedy and orderly

[16] G.R. No. 181535, 17 August 2016.

> fashion. **As such, the petitioner's plea that the relaxation of the rules will best serve the highest interest of justice is disregarded because of his lack of persuasive demonstration that his failure to present the plan during trial was not because of his neglect. The Court is wary of pleas for the liberalization of the rules and may only consider the same upon a clear and convincing showing by the petitioner of his observance of due diligence, which did not happen in this case. Indeed, such liberalization in the construction and application of the rules of procedure should not be made subordinate to the gross mistakes and inexcusable negligence of the litigant and his counsel; otherwise, the rules of procedure, albeit intended to ensure the speedy, inexpensive and smooth administration of justice, would be easily reduced to a mockery.**"[17]

Given the foregoing discussions, the Court *En Banc* sees no other option but to deny HWL's Motion.

WHEREFORE, premises considered, Halliburton Worldwide Limited-Philippine Branch's ***Motion for Reconsideration (Re: Decision dated October 29, 2020)*** is hereby denied for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

[17] Emphasis supplied.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice