REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

E. E. BLACK LTD. – PHILIPPINE BRANCH,
Petitioner,

- *versus* –

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1611
(CTA Case No. 8719)

Present:

Del Rosario, *P.J.*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan, *JJ.*

Promulgated:
MAY 20 2019 2:05pm

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RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of the Court *En Banc* is petitioner E. E. Black Ltd. – Philippine Branch's *Motion for Reconsideration (of Decision promulgated on 22 January 2019)*[1] filed on February 15, 2019. Petitioner's *Motion for Reconsideration* seeks reconsideration of the Decision of the Court *En Banc* promulgated on January 22, 2019,[2] (the "Assailed Decision") denying its Petition for Review for lack of merit. The Assailed Decision effectively affirmed the Decision dated March 8, 2016 as well as Resolution dated February 24, 2017 both rendered by the Third Division of this Court in CTA Case No. 8719.

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[1] Court *En Banc*'s Docket, pp. 263-289.
[2] *Id.*, pp. 222-252.

In a Resolution[3] dated February 26, 2019, the Court *En Banc* required the respondent to file his Comment or Opposition to petitioner's *Motion for Reconsideration* within a period of ten (10) days from receipt thereof. However, the Records Verification dated April 15, 2019[4] issued by the Judicial Records Division of this Court states that as of said date, respondent has yet to submit his required Comment or Opposition.

Petitioner moves for reconsideration of the Assailed Decision on the basis of the following grounds:[5]

I.

Petitioner is entitled to rely in good faith on the prevailing judicial interpretation in 2008, which Respondent indisputably implemented, that intercompany advances not evidenced by loan agreements are not subject to DST.

II.

The Filinvest Case does not interpret Section 197 of the 1997 Tax Code but Section 180 of the 1977 Tax Code and, therefore, not applicable to Petitioner's 2008 intercompany advances.

III.

Petitioner is not liable for DST on its 2008 intercompany advances since such advances are the same as interbranch or interdepartmental advances which are not subject to DST under Section 199(i) of the 1997 Tax Code.

IV.

Petitioner's good faith reliance on the decisions of the Court of Appeals and this Honorable Court in *APC Group, Inc. v. Commissioner of Internal Revenue* and on the BIR rulings on intercompany loans should, at the very least, warrant the non-imposition of surcharge and interest similar to the ruling of this Honorable Court in the recent case of *San Miguel Corporation v. Commissioner of Internal Revenue.* *gr*

[3] *Id.*, pp. 294-295.
[4] *Id.*, p. 296.
[5] *Id.*, pp. 264-265.

After a more circumspect evaluation of petitioner's arguments, the existing case records as well as the applicable laws and jurisprudence, the Court *En Banc* finds that petitioner's *Motion for Reconsideration* shall be partially granted.

The Court *En Banc* maintains its ruling that petitioner is liable for deficiency documentary stamp tax (DST) for taxable year 2008 and that the doctrine laid down by the Supreme Court in *Commissioner of Internal Revenue v. Filinvest Development Corporation (Filinvest)*[6] applies to the present case.

Contrary to petitioner's stance that it is entitled to rely in good faith to the alleged prevailing judicial interpretation in 2008 that intercompany advances not evidenced by loan agreements are not subject to DST, there was no prevailing judicial interpretation that was overturned by *Filinvest*. As the Court *En Banc* had sufficiently explained in the Assailed Decision, the decisions of the Court of Appeals and of this Court cannot, in any way, be deemed to have enunciated a prior doctrine that was overturned by *Filinvest*. This is because **only the decisions of the Supreme Court constitute binding precedents** and form part of the Philippine legal system, as prescribed under Article 8 of the Civil Code.[7] Judgments of lower courts and other collegiate courts bind only the parties to specific cases, unlike decisions of the Supreme Court which are universal in their scope and application as well as mandatory in character.[8]

The CA and CTA decisions being referred to by petitioner cannot be considered as binding precedent notwithstanding the fact that the said case was appealed to the Supreme Court via Petition for Review on *Certiorari* and that this Petition was denied for the failure of petitioner therein *'to show that a reversible error had been committed by the appellate court'* via the Minute Resolution dated May 17, 2004.

In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*,[9] the Supreme Court held:

> "It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final.

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[6] G.R. Nos. 163653 & 167689, July 19, 2011, 654 SCRA 56.
[7] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013, 693 SCRA 456 citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.
[8] *The Philippine Veteran Affairs Office v. Segundo*, G.R. No. L-51570, August 15, 1988, 164 SCRA 365.
[9] G.R. No. 167330, September 18, 2009 (Resolution), 600 SCRA 413, 446-447.

> When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
>
> With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, *<u>if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent.</u>* Thus, in CIR v. Baier-Nickel, the Court noted that a previous case, *CIR v. Baier-Nickel* **involving the same parties and same issues,** was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that **the previous case 'ha(d) no bearing'** on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.
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> Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision.
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> *<u>Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice</u>.*" *(Italics and underscoring supplied)*

The Court *En Banc* likewise pointed out in the Assailed Decision that the Supreme Court's interpretation of a statute constitutes part of the law as of the date it was originally passed since it merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[10] The Court *En Banc* also discussed briefly in the Assailed Decision the legislative history of the provision of law that was interpreted by the Supreme Court in *Filinvest*. It was therein found that the Supreme Court's 2011 interpretation of this provision of law in *Filinvest* became part of the NIRC as early as December 23, 1993, the date when the statute amending the NIRC, *i.e.*, Republic Act (RA) No. 9660 was enacted, up until the present. Given that the 2011 *Filinvest* interpretation of Section 180 of the NIRC (now Section 179) was deemed constituted as part of the NIRC since December 23, 1993 until the present, therefore, the same may be applied to the present case without violating the principle on non-retroactivity of laws and rulings.

As regards the imposition of surcharge and interests, the Court *En Banc* is presently of the view that petitioner should not be held liable therefor based on the jurisprudential precept that "good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax laws are sufficient justification to delete the imposition of surcharges and interest".[11] While it is true that reliance on the decisions of the Court of Appeals and of this Court may not be invoked by petitioner to extricate itself from DST liability, the same may nevertheless be used as basis of good faith sufficient to negate petitioner's liability for surcharge and interests. Mistake upon a doubtful or difficult question of law may properly be the basis of good faith.[12]

WHEREFORE, petitioner's *Motion for Reconsideration (of Decision promulgated on 22 January 2019)* is **PARTIALLY GRANTED**. The Decision dated March 8, 2016 and the Resolution dated February 24, 2017, both rendered by the Third Division of this Court in CTA Case No. 8719 are **AFFIRMED WITH MODIFICATION.** *ge*

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[10] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 205837, November 21, 2017; *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014, 725 SCRA 130; *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012, 676 SCRA 325; *Eagle Realty Corporation v. Republic*, G.R. No. 151424, July 31, 2009, 594 SCRA 555; *Castro v. Deloria*, G.R. No. 163586, January 27, 2009, 577 SCRA 20; *Roos Industrial Construction, Inc. v. National Labor Relations Commission*, G.R. No. 172409, February 4, 2008, 543 SCRA 666; *Pesca v. Pesca*, G.R. No. 136921, April 17, 2001, 356 SCRA 588; *Re: Resolution Granting Automatic Permanent Total Disability Benefits to Heirs of Justices and Judges Who Die in Actual Service*, A.M. No. 02-12-01-SC, November 24, 2004, 443 SCRA 549; *Columbia Pictures, Inc. v. Court of Appeals*, G.R. No. 110318, August 28, 1996, 261 SCRA 144; *Philippine Constitution Association v. Enriquez*, G.R. Nos. 113105, 113174, 113766 & 113888, August 19, 1994, 235 SCRA 506; *Senarillos v. Hermosisima*, G.R. No. L-10662, December 14, 1956, 100 Phil. 501.

[11] *Commissioner of Internal Revenue v. St. Luke's Medical Center/St. Luke's Medical Center v. Commissioner of Internal Revenue*, G.R. No. 195909 & G.R. No. 195960, September 26, 2012, 682 SCRA 66; *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786 (Resolution), September 11, 2006, 501 SCRA 450; *Antam Pawnshop Corporation v. Commissioner of Internal Revenue*, G.R. No. 167962, September 19, 2008, 566 SCRA 57; *Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 179085, January 21, 2010, 610 SCRA 514; *Commissioner of Internal Revenue v. Republic Cement Corporation*, G.R. Nos. L-35668-72, L-35683 & L-35677, August 10, 1983, 124 SCRA 46, 62-63; *Tuazon, Jr. v. Lingad*, G.R. No. L-24248, July 31, 1974, 157 Phil. 159, 167-168; *Connell Bros. Co. (Phil.) v. Collector of Internal Revenue*, G.R. No. L-15470, December 26, 1963, 119 Phil. 40, 46.

[12] *Limcoma Multi-purpose Cooperative v. Republic*, G.R. No. 167652, July 10, 2007, 527 SCRA 233; *Philippine National Bank v. Heirs of Militar*, G.R. No. 164801, June 30, 2006, 494 SCRA 308; *Development Bank of the Philippines v. The Honorable Court of Appeals*, G.R. No. 111737, October 13, 1999, 316 SCRA 650 citing Article 526, Civil Code; *Lecaroz v. Sandiganbayan*, G.R. No. 130872, March 25, 1999, 305 SCRA 396.

Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **Three Hundred Eighty Thousand Nine Hundred Thirty Pesos (₱380,930.00)**, representing the basic deficiency documentary stamp tax for taxable year 2008.

SO ORDERED.

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

WE CONCUR:

(I maintain my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen R-L
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice