REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CORAL BAY NICKEL CORPORATION,
Respondent.

CTA EB No. 1418
(CTA Case No. 8641)

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CORAL BAY NICKEL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1512
(CTA Case No. 8641)

Present:

DEL ROSARIO, *PJ*;
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ*.

Promulgated:

DEC 12 2018 4:05 p.m.

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RESOLUTION

Fabon-Victorino, J.:

On May 17, 2018, the Court rendered a Decision, disposing the case in the following fashion:

> **WHEREFORE,** the Petition for Review dated February 10, 2016 filed by the Commissioner of Internal Revenue, and the Petition for Review dated September 23, 2016 filed by Coral Bay Nickel Corporation, are both **DENIED**, for lack of merit.
>
> **SO ORDERED.**[1]

Both Coral Bay Nickel Corporation (CBNC) and the Commissioner of Internal Revenue (CIR) now move for reconsideration of the above decision in their respective motions both dated June 6, 2018.

CBNC's Motion for Partial Reconsideration:

CBNC claims that it clearly stated in its Petition for Review an assignment of error[2] with the corresponding discussion[3] pertaining to its entitlement for refund of input tax for CY 2011 in compliance with the rule on assignment of errors under Section 8, Rule 51 of the Rules of Court.

CBNC believes that the word "TIN-V" appearing in the VAT official receipts[4] (VAT O.Rs) issued by Cendaur Engineering (CE) is not fatal to its claim for refund for: 1) neither the Tax Code nor any revenue regulation (RR) consider the word "TIN-V" as defective or flawed for the purpose of substantiating input taxes, citing jurisprudence[5] as authority; 2) the information stated in such VAT O.Rs was approved by the Bureau of Internal Revenue (BIR); and 3) the word "TIN-V" simply means "Taxpayer's Identification Number - VAT."

Equally compliant with the substantiation requirements are the VAT O.Rs issued by Century Properties (CP)[6] containing notations "collected on behalf of CEN Holdings, Inc. (CHI)," says CBNC. Allegedly, the receipts themselves reveal that they were issued by CP and not CHI, hence, the seller of service from which input taxes were incurred was

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[1] *Rollo,* p. 135.
[2] Assignment of Error/Issue, CBNC's petition for review, p. 6.
[3] Paragraphs 28 and 29, CBNC's petition for review, p. 8.
[4] Exhibits P-116.672 to 677 and P-116.1279.
[5] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007.
[6] Exhibits O-116.522 to 525 and P-116-818 to 819.

CP itself. With the foregoing, CBNC believes that the Court must grant the refund of the additional amount of ₱1,448,072.01.

Despite directive, the CIR failed to file his comment/opposition to CBNC's Motion for Partial Reconsideration.[7]

CIR's Motion for Reconsideration:

The CIR contends that pursuant to Section 112 of the NIRC, as amended, he had 120-days to decide CBNC's administrative claim, reckoned from the date of submission of complete supporting documents. CBNC had 30 days from the lapse of the said 120-day period to institute its appeal before the CTA, lest its right to appeal would be lost. Given that CBNC failed to submit documents to substantiate its claim for refund, his 120-day period to act on the administrative claim did not run rendering its filing of Petition for Review with the Court in Division premature, thereby leaving the Court without any option but to dismiss the case outright.

Further, CBNC is not the proper party to claim the subject refund. Citing case-law[8] on the matter, he opines that goods/services destined for consumption inside an economic zone (ECOZONE) are zero-rated, for which reason, suppliers may not shift the VAT burden to entities located therein. Since CBNC is located inside the Rio Tuba Export Processing Zone, it is not legally feasible for its suppliers to pass on the VAT charged on its purchases of goods/services. In the event that the supplier of goods/services erroneously shifted VAT to CBNC, it is the former and not the latter which has the legal right to claim the erroneously shifted VAT.

Even granting that CBNC is the proper party to institute the present claim, it is still not entitled to the refund sought as it failed to present certifications from the Board of Investments, Department of Finance, and Philippine

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[7] Records verification report dated September 21, 2018, *rollo,* unpaged.

[8] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,* G.R. No. 190506, June 13, 2016.

Economic Zone Authority to the effect that it has no pending administrative claim for refund before the said government entities. CBNC also failed to present sufficient proof showing that the input taxes it incurred are attributable to its zero-rated sales. The CIR considers the evidence adduced by CBNC deficient for the grant of the subject claim for refund justifying the denial of the entire claim.

By way of *Comment/Opposition,*[9] CBNC posits that the CIR was not able to furnish it with a copy of his Motion for Reconsideration at least three (3) days from date of hearing, in violation of Section 4, Rule 15 of the Rules of Court, rendering such motion a mere scrap of paper. Further, allowing the CIR to determine the completeness of the supporting documents for purposes of counting the 120-day period for him to act on his level is practically allowing him to prevent the taxpayer-claimant from seeking timely recourse to the Court. Moreover, its evidence show that its purchases of goods/services were consumed outside the Rio Tuba Export Processing Zone, hence, input taxes could be legally shifted to it.

It is plain that both motions for reconsideration filed by CBNC and the CIR merely mimic the arguments they advanced in their previous pleadings, all of which have been squarely addressed and passed upon by the Court in the impugned Decision of May 17, 2018. No reason nor rhyme had been raised to justify a reversal or even a modification of the Court's ruling. To discuss them anew is certainly useless, if not futile.

In any event, even assuming *ex gratia argumenti* that the parties' respective Motions are impressed with merit, their resort to the Court *En Banc* is legally and procedurally flawed, justifying denial of their respective actions.

The matters properly cognizable by the Court *En Banc* are expressly laid down in Section 18 of Republic Act (R.A.) No. 1125, as amended, which reads:

> SEC. 18. Appeal to the Court of Tax Appeals En Banc. - No civil proceeding involving matter arising under the National

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[9] *Rollo,* pp. 181-196.

> Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
>
> ***A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial***, may file a petition for review with the CTA en banc. (emphasis supplied)

In implementing the above provision, Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA)[10] stringently requires a party dissatisfied with the Decision of the Court in Division to first institute a timely motion for reconsideration or new trial thereto before invocation of the Court *En Banc's* jurisdiction may be permitted.[11]

In *Asia Trust Development Bank, Inc. vs. Commissioner of Internal Revenue,*[12] no less than the Supreme Court explained that when the Court in Division renders an Amended Decision, it is technically a decision distinct from the original one. *Ergo*, prior filing by the aggrieved party of a motion for reconsideration/new trial of the Amended Decision is again compulsory, lest the Amended Decision shall become final and executory, to wit:

> Thus, in order for the CTA *En Banc* to take cognizance of an appeal *via* a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory.
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> <u>The same is true in the case of an amended decision.</u> Section 3, Rule 14 of the same rules defines an amended decision as '[a]ny action modifying or reversing a decision of the Court en banc or in Division.' As explained in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*, an amended decision is a different

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[10] **SECTION 1.** *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

[11] See *Commissioner of Customs vs. Marina Sales, Inc.,* G.R. No. 183868, November 22, 2010.

[12] G.R. No. 201530, April 19, 2017.

> decision, and thus, is a· proper subject of a motion for reconsideration.[13]

In this case, the Court in Division rendered its Original Decision dated August 25, 2015,[14] granting in part CBNC's refund to the extent of ₱23,298,024.45, thus:

> **WHEREFORE**, in view thereof, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund be issued in favor of petitioner Coral Bay Nickel Corporation in the reduced amount of ₱23,298,024.45, representing unutilized input taxes attributable to zero-rated sale of goods for the for quarters of year 2011.
>
> **SO ORDERED**.

Both CBNC[15] and the CIR[16] moved to reconsider the above Decision. In the Resolution dated January 4, 2016,[17] the Court in Division allowed CBNC to present additional evidence in support of its plea. Thereafter, the Court in Division promulgated an Amended Decision dated August 23, 2016,[18] increasing CBNC's refundable amount to ₱23,298,946.12, thus:

> **WHEREFORE**, in view thereof, (CBNC)'s Motion for Reconsideration and Supplemental Motion are **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the Decision dated August 25, 2015 is **AMENDED**, as follows:
>
> > "**WHEREFORE**, in view thereof, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund be issued in favor of petitioner Coral Bay Nickel Corporation in the reduced amount of ₱23,298,946.12, representing unutilized input taxes attributable to zero-rated sale of goods for the for quarters of year 2011."
>
> **SO ORDERED**.

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[13] Underscoring supplied, citations omitted.
[14] Docket (CTA Case No. 8641), pp. 689-709.
[15] CBNC's Motion for Reconsideration dated September 10, 2015, ibid. at pp. 717-729; and its Supplemental Motion for Reconsideration dated October 9, 2015, id. at pp. 774-780.
[16] The CIR's Motion for Partial Reconsideration dated September 10, 2015, id. at pp. 750-756.
[17] Id. at pp. 806-818.
[18] Id. at pp. 930-939.

Consistent with the rules and jurisprudence, the proper legal recourse for both CBNC and the CIR is to seek reconsideration of the Amended Decision dated August 23, 2016, which they failed to do for reasons only known to them. This procedural lapse allowed the Amended Decision of August 23, 2016 to attain immutability, hence, may no longer be disturbed. In other words, CBNC and the CIR are now precluded from seeking affirmative relief with the Court *En Banc* relative to the present consolidated cases.

WHEREFORE, the Motion for Partial Reconsideration and the Motion for Reconsideration, both dated June 6, 2018 respectively filed by Coral Bay Nickel Corporation and the Commissioner of Internal Revenue are **DENIED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(I reiterate my Concurring and Dissenting Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice