

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

En Banc

**COMMISSIONER OF
INTERNAL REVENUE,**

Petitioner,

**CTA *EB* NO. 3171
(CTA Case No. 10944)**

Members:

**RINGPIS-LIBAN, P.J.,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES,
ANGELES,
TESTON, and
CENTENO-DIJAMCO, JJ.**

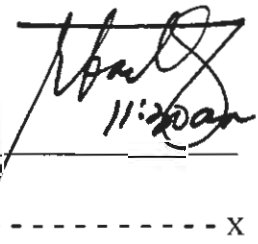
- versus -

**AIR DRILLING ASSOCIATES
PTE LTD.,**

Respondent.

Promulgated:

SEP 28 2026


11:20am

X - - - - - X

DECISION

MODESTO-SAN PEDRO, J.:

Before the Court *En Banc* is a Petition for Review docketed as CTA *EB* No. 3171, assailing the Decision, dated December 18, 2024, (“Assailed Decision”), and Resolution, dated May 7, 2025, (“Assailed Resolution”), promulgated by the Court’s First Division in the case docketed as CTA Case No. 10944, the dispositive portions of which respectively read:

Decision dated December 18, 2024:

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **₱1,812,278.91**, representing its unutilized input VAT attributable to zero-rated sales for the first quarter of taxable year 2020.

9

SO ORDERED.

Resolution dated May 7, 2025:

WHEREFORE, the *Motion for Reconsideration (Re: Decision dated December 18, 2024)* filed by respondent Commissioner of Internal Revenue is hereby **DENIED** for lack of merit.

SO ORDERED.

Parties to the Case¹

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (“BIR”), vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the *National Internal Revenue Code, as amended* (“the Tax Code”) and other tax laws, rules, and regulations.

Respondent Air Drilling Associates Pte. Ltd., on the other hand, is a foreign company organized and existing under the laws of the Republic of Singapore and was duly licensed by the Philippine Securities and Exchange Commission (“SEC”) to establish a branch office in the Philippines to pursue geothermal aerated drilling services and related opportunities therein. It is registered with the BIR as a value-added tax (“VAT”) taxpayer under Tax Identification Number (“TIN”) 251-156-024-00000.

The Facts

The case’s factual antecedents were culled from the Assailed Decision:

[Respondent] avers that in the course of its business as a contractor providing aerated drilling services, it incurred input VAT on its domestic purchases of goods and services, importation of goods, and services rendered by non-residents.

During the first quarter (1st quarter) of TY 2020, [respondent] rendered aerated drilling services to renewable energy (RE) developers, Energy Development Corporation (EDC) and Philippine Geothermal Production Company (PGPC), where it accumulated unutilized creditable input VAT attributable to its zero-rated sales amounting to ₱2,341,816.67¹

¹ Assailed Decision, pp. 1 to 2.

same period on March 29, 2022. Allegedly, the aforementioned creditable input VAT was not credited against [respondent]'s output VAT liabilities in the succeeding quarters.

On March 30, 2022, [respondent] filed a letter of even date with the BIR, requesting a refund of the full amount of ₱2,341,816.67, allegedly representing unutilized input VAT credits arising from its local purchases of goods and services, services rendered by non-residents, and the importation of non-capital goods attributable to its zero-rated sales of services to EDC and PGPC for the 1st quarter of TY 2020.

However, on June 30, 2022, [respondent] received a letter dated June 13, 2022, denying its administrative claim for lack of legal and factual basis.

Aggrieved, [respondent] elevated the matter to this Court by filing the instant Petition of Review on July 29, 2022.

On December 18, 2024, the Court's First Division promulgated the Assailed Decision, which was upheld in the Assailed Resolution date May 7, 2025 after petitioner moved for its reconsideration

Proceedings Before this Court

Petitioner then filed his Motion for an Extension of Time to File Petition for Review before this Court on May 27, 2025,² and the case was docketed as CTA EB No. 3171.

In the Minute Resolution dated June 4, 2025,³ the Court *En Banc*, subject to the condition that the motion for extension was filed on time, granted petitioner a final and non-extendible period of 15 days from May 28, 2025, or until June 12, 2025, within which to file his Petition for Review.

On June 9, 2025, petitioner filed his *Petition for Review*,⁴ dated on even date.

On August 27, 2025, in compliance with the Court *En Banc*'s directive,⁵ petitioner's counsel explained: (1) their authority to file the Motion and Petition; and (2) the discrepancy in the date of the Petition *vis-à-vis* the date of the Verification on Non-Forum Shopping on May 26, 2025.⁶

Respondent filed its Comment on October 23, 2025.⁷

² *Rollo*, pp. 1 to 8.

³ *Id.* at 9.

⁴ *Id.* at 10 to 73.

⁵ *Id.* at 74.

⁶ *Id.* at 75 to 125.

⁷ *Id.* at 130 to 138.

Respondent filed its Comment on October 23, 2025.⁷

In a Minute Resolution dated December 10, 2025,⁸ this Court *En Banc* submitted the case for decision.

Hence, this Decision.

The Assigned Error

Petitioner raises as an error the same issue resolved by the Court in Division:⁹

THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN PARTIALLY GRANTING RESPONDENT'S CLAIM FOR REFUND OR ISSUE A TAX CREDIT CERTIFICATE IN THE AMOUNT OF ONE MILLION EIGHT HUNDRED TWELVE THOUSAND TWO HUNDRED SEVENTY-EIGHT PESOS AND NINETY-ONE CENTAVOS REPRESENTING ITS EXCESS AND UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE FIRST QUARTER OF TAXABLE YEAR 2020.

Arguments of the Parties

Petitioner's arguments:

Petitioner argues that the Court in Division erred in partially granting respondent's claim for refund on the following grounds:

- 1.) Respondent failed to prove that it is engaged in zero-rated sales, particularly that it failed to submit a Department of Energy ("DOE") Certificate of Endorsement pursuant to DOE Department Circular ("DC") No. DC2021-12-0042;
- 2.) The billing invoices issued by respondent failed to show that the aerated drilling services pertain to the registered projects eligible for VAT zero-rated purchases;
- 3.) The official receipts ("OR") issued by respondent do not prominently display the term "zero-rated sale" as required by *Section 113(B)(2)(c) of the Tax Code*; and ✓

⁷ *Id.* at 130 to 138.

⁸ *Id.* at 139.

⁹ *Id.* at 15.

- 4.) Respondent failed to prove that its local purchases of goods were directly attributable to the alleged zero-rated sales.

Respondent's argument:

Respondent, on the other hand, points out that: (1) petitioner's arguments were already considered by the Court in Division; (2) it is not required under *Republic Act No. 9513* to register as a DOE and Board of Investment ("BOI")-accredited supplier to be entitled to VAT zero-rating on its sales to renewable energy ("RE") developers; (3) it submitted the necessary DOE and BOI registration and DOE endorsement of all relevant RE projects of its clients; and (4) it complied with the invoicing requirements of *Section 113 of the Tax Code*.

Our Ruling

The *Petition for Review* must be dismissed on two grounds:

- 1.) Petitioner's counsel lacks authority to file the Petition; and
- 2.) The petition was filed without the requisite certification against forum shopping.

The Petition for Review was filed on time, but petitioner's counsel lacks authority to file it.

*Rule 4, Section 2(a)(1) of the Revised Rules of the Court of Tax Appeals*¹⁰ ("RRCTA") provides that the Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the decisions or resolutions on motions for reconsideration or new trial of the Court's Divisions in the exercise of its exclusive appellate jurisdiction over cases arising from administrative agencies (*i.e.* the BIR), thus:

SECTION 2. *Cases Within the Jurisdiction of the Court En Banc.*
— The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

- (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over

¹⁰ A.M. No. 05-11-07-CTA, November 22, 2005.

(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

In relation thereto, *Rule 8, Section 1 of RRCTA* provides that 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.

On the other hand, *Section 3(b)* of the same provides that:

SECTION 3. *Who May Appeal: Period to File Petition.* —

....

(b) 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. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

As such, in order for this Court to acquire jurisdiction in the instant case, the petition for review by the aggrieved party must be filed before the Court *En Banc* within 15 days from the date of receipt of the Court in Division's resolution on the party's timely motion for reconsideration or new trial on the decision of said Court acting in division. However, said 15-day period to file petition for review before the Court *En Banc* may be extended by a period not exceeding 15 days from the expiration of the original period within which to file the petition for review.

In this case, petitioner received the Assailed Resolution on his timely filed Motion for Partial Reconsideration on May 13, 2025,¹¹ giving him until May 28, 2025 to file a petition for review before this Court.

Petitioner then filed a Motion for an Extension of Time to File Petition for Review on May 27, 2025, in order to avail of the additional 15 days from the expiration of the original 15-day period to file the petition for review. This was granted by this Court on June 4, 2025, giving petitioner until June 12, 2025 to file his petition for review.✓

¹¹ *Id.* at 65.

Petitioner filed his Petition for Review on June 9, 2025, via registered mail. Accordingly, this Court *En Banc* should have acquired jurisdiction over the same.

However, an essential element involving appeals in civil cases is that they be made by the proper authority or at least be clothed with the proper authority.

The present Petition for Review lacks both.

Section 35(1), Chapter 12, Title III, Book IV of Executive Order No. 292 or the Administrative Code of 1987 specifies that it is the Office of the Solicitor General (“OSG”) who shall represent the government and all its agencies and instrumentalities in cases pending in the Court of Appeals and the Supreme Court:

SECTION 35. *Powers and Functions.* — *The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer.* When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; *represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.*

....

(8) *Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts, and exercise supervision and control over such legal Officers with respect to such cases.*

(Italics and emphasis supplied.)

Notably, while the OSG has the sole authority to represent the government in all civil actions before the Supreme Court and Court of Appeals, it may deputize legal officers of government bureaus (*i.e.* the BIR), to appear or represent the government in cases involving its office brought before the courts. However, the extent of deputization of legal officers is merely on an assisting capacity. Accordingly, it is still the Solicitor General who shall exercise supervision and control over such deputized legal officers. Necessarily included in the power to control the deputized legal officers in

appealed criminal cases is to cause the filing of an appeal with the proper court.

On the other hand, the Court is not unaware of *Section 220 of the Tax Code*, which states that:

Section 220. *Form and Mode of Proceeding in Actions Arising under this Code.* – Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.

Meanwhile, *Revenue Memorandum Circular ("RMC") No. 25-2010*, which published the Memorandum of Agreement ("MOA") between the BIR and OSG dated March 17, 2010, provides that:

B. Handling Cases

1. Cases of first instance before the Court of Tax Appeals Divisions, Municipal Trial Courts, Metropolitan Trial Courts, Municipal Circuit Trial Courts, Regional Trial Courts, Department of Justice and other administrative agencies.

a. The BIR handling lawyers shall be the lead lawyer. As lead lawyer, he/she shall have the following responsibilities:

i. To appear before the courts; and

ii. To prepare all pleadings, motions, orders, decisions, resolutions, communications and other papers/documents in connection with the case.

b. Upon assignment of the case, the BIR handling lawyer shall ensure that the OSG shall be furnished with a copy of pleadings filed in relation to the case through registered mail.

2. Cases appealed before the Regional Trial Courts, Court of Appeals and the Court of Tax Appeals *En Banc*.

a. The OSG hereby deputizes BIR handling lawyers to:

i. Appear before the Courts; and

ii. Continue the prosecution/litigation of appealed tax cases before the Regional Trial Courts, Court of Appeals and the Court of Tax Appeals *En Banc*.

The BIR handling lawyer shall have the following responsibilities:✓

- i. To appear before courts; and
 - ii. To prepare all pleadings, motions, orders, decisions, resolutions, communications and other papers/documents in connection with the case.
- b. The BIR shall periodically submit a list of handling lawyers to the OSG for purposes of deputation.

Based on the foregoing MOA, the BIR handling lawyer's authority to act as lead lawyer for cases brought before the CTA, among others, is only on its first instance. This is, indeed, consistent with *Section 220 of the Tax Code* where the authority granted to the legal officers of the BIR is only upon the institution of the civil and criminal actions and proceedings under the *Tax Code*.

The *Tax Code* and BIR issuances authorize BIR legal officers to conduct civil and criminal actions in behalf of the government for proceedings instituted under the authority of the *Tax Code* or other laws enforced by the BIR. However, this is not sufficient to override the principal authority of the OSG to represent the government in courts, particularly in appealed cases.

RMC No. 25-2010 provides a separate guideline for appealed cases before the CTA *En Banc*, where the OSG merely deputizes BIR handling lawyers to appeal the case and continue the proceedings. In this light, the BIR undertakes to periodically submit a list of its handling lawyers for purposes of deputization by the OSG.

This means that the authority of the BIR handling lawyers to appeal a case before the CTA *En Banc* is not automatic. There must be proof of their deputization from the OSG, which shall serve as their authority to appeal the case.

This matter was already clarified in *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*,¹² ("*La Suerte*") viz:

The *institution or commencement* before a proper court of civil and criminal actions and proceedings arising under the Tax Reform Act which "shall be conducted by legal officers of the Bureau of Internal Revenue" is not in dispute. *An appeal from such court, however, is not a matter of right. Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic. This Court continues to maintain that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings. This* ✓

¹² G.R. No. 144942 (Resolution), July 4, 2002.

pronouncement finds justification in the various laws defining the Office of the Solicitor General, beginning with Act No. 135, which took effect on 16 June 1901, up to the present Administrative Code of 1987. Section 35, Chapter 12, Title III, Book IV, of the said Code outlines the powers and functions of the Office of the Solicitor General . . .
(Italics in the original.)

Based on the foregoing, *Section 220 of the Tax Code* and *RMC No. 25-2010* are both clear as to the BIR legal officers' authority to institute or commence civil and criminal actions and proceedings under the Tax Code. However, as clarified in the above case, such authority does not extend to appellate proceedings.

Similarly, in this case, the BIR handling lawyers invoke the appellate jurisdiction of this Court to review the CTA First Division's decision and resolution. As such, it is essential that the instant Petition for Review be filed by the OSG or, at least, that the BIR handling lawyers be able to produce proof that it is deputized by the OSG for such purpose.

The case records, however bear nothing of any involvement by the OSG, or that it at least was given notice thereon. It was not served with copy/ies of the instant Petition for Review filed before this Court and any of the subsequent submissions made by parties. This lack of notice on the OSG with respect to the present appeal herein confirms that the legal officers of the BIR were not deputized, hence, not authorized, to appeal the civil case decided by the CTA's First Division.

In fact, the BIR handling lawyers were already given an opportunity to explain their authority to file the present Petition for Review, yet they failed to satisfactorily provide proof of authority on the basis of their erroneous interpretation of *RMC No. 25-2010*.

On the other hand, while the Court has the prerogative to relax its procedural rules to serve the demands of substantial justice and equity, such is unavailing in this case.

First, the BIR handling lawyers failed to explain why it by-passed the policy on the requisite deputization by the OSG prior to filing the present appeal before the Court *En Banc*. As laid down in *Babasa v. Real*:¹³

To be sure, the relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it. To merit liberality, petitioners must show reasonable cause justifying their non-compliance with the rules and must convince the Court that the outright

¹³ G.R. No. 254945 (Notice), March 1, 2021.

dismissal of the petition would defeat the administration of substantive justice, which petitioners failed to do. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Petitioners urge a less rigid application of procedural rules to give way to the resolution of the case on its merits. However, the desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse, as in this case.

Second, the BIR handling lawyers did not just by-pass the OSG's principal authority to file the instant Petition for Review, but they also did not notify the latter of the present appellate proceedings, even as a matter of courtesy.

In *Commissioner of Internal Revenue v. East Asia Utilities Corporation*,¹⁴ the Supreme Court relaxed the procedural lapse of lack of authority by the BIR legal officers to file an appeal before it on behalf of the government. However, key in disregarding said lapse was that the OSG had been notified of the proceedings since filing the motion for extension of time to file a petition for review and all issuances of the Supreme Court regarding the case's developments, thereby protecting the interests of the government.

But then, as already noted earlier, such notification to the OSG is absent from this case, rendering it unaware of the BIR handling lawyers' actions and depriving it of the opportunity to raise its own arguments to protect the government's interests herein. While the BIR handling lawyers' zeal in pursuing the civil case against respondent is commendable, the same cannot be used to justify any by-pass in the existing laws and policies with respect to civil actions and appeals, especially in light of the *La Suerte* ruling. This apparent by-pass by BIR handling lawyers cannot be countenanced and, thus, cannot warrant relaxation of rules.

Without the proper deputization from the OSG, the legal officers of the BIR have no authority to file the instant Petition, thereby rendering it dismissible.

The petition was filed without the requisite certification against forum shopping.

Rule 8, Section 4(b) of the RRCTA provides that 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. ✓

¹⁴ G.R. No. 225266, November 16, 2020.

Meanwhile, *Rule 43, Section 6(d) of the Rules of Court* provides that the petition for review filed under *Rule 43* must contain a sworn certification against forum shopping as provided in the last paragraph of *Section 2, Rule 42*, while *Section 7* thereof provides that the *failure of the petitioner to comply with any of the requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition* shall be sufficient ground for the dismissal thereof.

Accordingly, absence of a sworn certification against forum shopping is a sufficient ground for dismissal of a petition for review filed under *Rule 43 of the Rules of Court*.

In this case, petitioner indeed attached a certification against forum shopping with its Petition for Review. However, the certification was already signed on May 26, 2025, even before the Petition was filed on June 9, 2025.

Upon the Court's directive, petitioner explained that the Petition and the certification were already drafted as early as May 26, 2025. However, there were some grammatical and typographical corrections made on the draft petition thereafter, and the draft was finalized only on June 9, 2025.

The Court is not convinced.

The Court cannot subscribe to the bare allegation of petitioner that the changes made from the time the certification was signed to the time that the petition was finalized and filed were merely from grammatical and typographical corrections. Petitioner did not submit the draft petition on May 26, 2025 for purposes of comparison with the final draft dated June 9, 2025 and demonstrate the claimed minor or insignificant revisions.

Further, it is notable that there is a difference of 10 working days from the time the certification was signed on May 26, 2025 to the filing of the petition on June 9, 2025. This discrepancy in working days is too significant for the Court to ignore in order for Us to be assured that petitioner did not institute any other action on the same matter before other tribunals during those 10 working days.

The requirement of a certification against forum shopping is not a mere procedural compliance. It is the Court's mechanism to effectively safeguard the judicial institution against forum shopping ✓

Forum shopping exists when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively. The remedies stem from the same transactions, are founded on identical facts and circumstances, and raise substantially similar issues, which are either pending in, or have been resolved adversely by another court. Through forum shopping, unscrupulous litigants trifle with court processes by taking advantage of a variety of competent tribunals, repeatedly trying their luck in several different fora until they obtain a favorable result. Because of this, forum shopping is condemned, as it unnecessarily burdens the courts with heavy caseloads, unduly taxes the manpower and financial resources of the judiciary, and permits a mockery of the judicial processes. *Absent safeguards against forum shopping, two competent tribunals may render contradictory decisions, thereby disrupting the efficient administration of justice.*¹⁵

Indeed, a complainant or petitioner's compliance in filing a sworn certification against forum shopping with its complaint or petition cannot be taken lightly by the courts, especially in cases where the counsel of the parties are expected to be well-aware of its purpose and significance. It is in this light that We find petitioner's explanation on noted discrepancy between the dates of certification against forum shopping and Petition for Review unsatisfactory and, therefore, render it non-compliant with the required contents of the petition as prescribed under *Rule 43 of the Rules of Court*. Consequently, the case is, beyond question, dismissible.

ACCORDINGLY, the *Petition for Review* filed by petitioner is hereby **DISMISSED** for lack of jurisdiction.

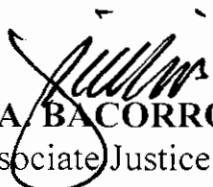
SO ORDERED.


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:


MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

¹⁵ *Paiton, et. al. v. Armscor Global Defense, Inc. (formerly Arms Corporation of the Philippines), et. al.*, G.R. No. 255656, April 25, 2022.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice


PAOLO S. TESTON
Associate Justice


DEBBIE JEAN I. CENTENO-DIJAMCO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


MA. BELEN M. RINGPIS-LIBAN
Presiding Justice