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

**SECOND DIVISION**

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| **TOLEDO POWER COMPANY,** Petitioner, | **CTA CASE NO. 9307** |
| | Members: |
| - versus - | **CASTAÑEDA, JR,** Chairperson<br>**MINDARO-GRULLA,** *and*<br>**BACORRO-VILLENA,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated:<br>FEB 0 3 2020 3:38 PM |

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**SO ORDERED.**

Respondent reiterates that petitioner is not entitled to its claim for refund. According to respondent, petitioner's assertion that the electricity supplied to Carmen Copper Corporation (CCC) was entirely used for mining and ore processing activities has not been established by sufficient proof. In fact, respondent asserts that based on petitioner's Summary List of Sales (SLS), there is an output value-added tax (VAT) due on the portions of its sales to CCC in 2011.

More so, respondent likewise assails this Court's ruling that a FAN should have been issued to petitioner after it failed to reply to the Preliminary Assessment Notice (PAN) within the 15-day period. He argues that the FAN and Final Letter of Demand (FLD) are immaterial in the present case since petitioner already made a payment after receipt of the PAN. Thus, to require respondent to issue a FAN or FLD after payment has been made is imposing an impossible condition on the part of respondent.

On the other hand, in its comment, petitioner primarily claims that respondent's Motion is merely a reiteration of his previous allegation which has already passed upon in this Court's Decision.

After due consideration, this Court finds no merit in the instant Motion for Reconsideration.

As already discussed in the assailed Decision, petitioner was found to have satisfactorily complied with the conditions laid down under Revenue Memorandum Order (RMO) No. 9-2000. By having so, petitioner is not liable for deficiency VAT over its sales of electricity to CCC for taxable year 2011 primarily because the said sale is subject to VAT zero-rating. Consequently, there being no basis for the payment of VAT on petitioner's sales of electricity to CCC, petitioner's payment is, therefore, erroneous.

With regard to respondent's argument that issuance of the FAN is already immaterial after voluntary payment of the deficiency VAT is made, the same is also misplaced. As provided in Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, a taxpayer's liability to pay the assessed tax arises only upon a notice and demand from respondent or his duly authorized representative – which is in the form of an assessment that fixes and determines the

tax liability of a taxpayer. And, as soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded.[1] Simply put, it is the FAN which create the liability to pay tax on the part of a taxpayer.

In view of the foregoing, this Court finds no cogent reason to reverse or modify the Decision assailed by respondent.

**WHEREFORE**, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated 9 October 2019) is **DENIED** for lack of merit.

**SO ORDERED**.

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

We Concur:

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

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

[1] *Antonio P. Callanta, et. al vs. Office of the Ombudsman, et. al.*, G.R. Nos. 115253-74, January 30, 1998.