REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CARMEN COPPER CORPORATION, *Petitioner,*	**CTA *EB* NO. 2568** (CTA Case No. 9954)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2642** (CTA Case No. 9954)
-versus-	*Present*: **DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *JJ.*
CARMEN COPPER CORPORATION, *Respondent.*	Promulgated: MAY 02 2024 10:05 a.m.

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RESOLUTION

CUI-DAVID, J.:

For the resolution of this Court are:

1. The Commissioner of Internal Revenue's (CIR) ***Motion for Reconsideration (Re: Decision promulgated 19***

September 2023), filed on October 9, 2023,[1] with Carmen Copper Corporation's (CCC) *Comment (to Petitioner's Motion for Reconsideration) [Re: CTA EB No. 2642]*,[2] filed on November 14, 2023;

2. CCC's ***Motion for Reconsideration***,[3] filed on October 11, 2023, without the CIR's comment per *Records Verification* dated December 11, 2023.[4]

Both *Motions* assail the *Decision* of this Court promulgated on September 19, 2023, with the following dispositive portion:

> **WHEREFORE**, premises considered, the *Petition for Review* filed by Carmen Copper Corporation in CTA *EB* No. 2568 is **DISMISSED** for lack of jurisdiction, while the *Petition for Review* filed by the Commissioner of Internal Revenue in CTA *EB* No. 2642 is **DENIED** for lack of merit.
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> Accordingly, the *Decision* dated February 2, 2021, the *Amended Decision* dated December 16, 2021, and the *Resolution* dated May 31, 2022, of the Court's First Division in CTA Case No. 9954 are **AFFIRMED**.
>
> **SO ORDERED**.

CIR's Motion for Reconsideration

As he did in his *Petition for Review*, the CIR argues anew that the law requires only "creditable input taxes" that are "directly attributable" to zero-rated sales may be refunded. Relying on the European value-added tax (VAT) system, he argues that only the VAT paid for supplies directly used in the business is creditable as the input tax of a VAT-registered person. Thus, purchases must relate to the supplies, *i.e.*, goods/services.

The CIR adds that to be creditable, the input tax must come from purchases of goods that form part of the taxpayer's finished product or be directly used in the production chain. Further, there must be a showing of the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated.

[1] *En Banc (EB)* Docket, pp. 175-183.
[2] *EB* Docket (CTA *EB* No. 2568), pp. 215-218.
[3] *Id.*, pp. 188-211.
[4] *Id.*, unpaged.

Having failed to establish direct attributability between the input tax on purchases *vis-à-vis* its zero-rated sales, the CIR insists that CCC fell short of proving the veracity of its claim for a refund.

In its *Comment*, CCC submits that all the arguments the CIR raised in its Motion for Reconsideration are mere reiterations of arguments that the Court in Division had already considered.

CCC's Motion for Reconsideration

CCC submits that the Court erred in dismissing its *Petition for Review* on the ground of lack of jurisdiction. CCC argues that Republic Act (RA) No. 9282 only speaks of a "decision" and a "resolution." CCC suggests that nowhere in RA No. 9282 is the term "amended decision" indicated. According to CCC, "there is a clear legislative intent on the part of Congress to make the term 'resolution' encompass any action resolving a motion for reconsideration whether the same be on the merits or some other reason." CCC further points out that the term "amended decision" is introduced in the Internal Rules of the Court of Tax Appeals under Rule VI, Section 12, which pertains to a "resolution."[5]

CCC further underscores that its *Motion for Reconsideration* was granted in the *Amended Decision,* and according to CCC, "it makes no logical or practical reason for petitioner to question for the second time" the Court in Division, for that would "only mean a second motion for reconsideration." Perhaps rhetorically, CCC asks that, assuming the *Motion* would be granted and an amended decision be issued anew, it will be required to file another motion for reconsideration for the third and fourth time.[6] CCC likewise argues against the applicability of *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue (Asiatrust).*[7] According to CCC, the *Amended Decision* of the Court in Division in the instant case does not contain new matters not raised in the *Motion for Reconsideration.* CCC instead seeks to apply the ruling in the CTA *En Banc* case of *Rex Chua Co Ho v. People.*[8]

[5] *Motion for Reconsideration*, pars. 3-6.
[6] *Id.*, par. 7.
[7] G.R. Nos. 201530 & 201680-81, April 19, 2017.
[8] CTA *EB* Crim. Case No. 072 (CTA Crim. Case Nos. O-287, O-288, O-289, O-290, & O-291), March 30, 2022.

Invoking *Pacific Life Assurance Corp. v. Sison,*[9] CCC argues that an appeal should not be dismissed on a mere technicality and that all litigants must be afforded the fullest opportunity to adjudicate their cases on the merits.

The other allegations in the *Motion for Reconsideration* are mere reiterations of CCC's arguments in its *Petition for Review, i.e.,* due process requires that CCC must be informed of the factual and legal bases supporting the administrative decision of the CIR, that sales of the Board of Investments (BOI)-registered enterprises are zero-rated for VAT purposes by the mere fact of actual exportation and that they do not have to be paid in foreign currency to be considered zero-rated for VAT purposes, that the disallowances of all of its input taxes on the ground of application of the doctrine in *Coral Bay* are improper, considering that it only applies to Philippine Economic Zone Authority (PEZA)-registered enterprises and not to BOI-registered enterprises.

We resolve.

CCC's Motion for Reconsideration

The main issue to be resolved concerning CCC's Motion for Reconsideration is whether CCC is required to file a motion for reconsideration on the Amended Decision of the Court in Division before filing an appeal with the Court *En Banc.*

We resolve in the affirmative; thus, We deny CCC's *Motion for Reconsideration.*

First, a discussion of the proceedings before the Court in Division is imperative.

On February 2, 2021, the Court in Division partially granted CCC's *Petition for Review.*[10] The dispositive portion of the assailed *Decision* reads:

[9] G.R. No. 122839, November 20, 1998.
[10] *EB* Docket (CTA *EB* No. 2568), pp. 38-83.

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**.
>
> [...] Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** to [...] Carmen Copper Corporation the total amount of P28,912,016.82, representing [its] excess and unutilized input VAT on importations attributable to zero-rated sales for the 2nd quarter of taxable year 2016, broken down as follows:
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> (i) P20,041,479.05, granted per Letter dated September 19, 2018 of Ms. Erlinda A. Simple, Assistant Commissioner of Internal Revenue; and,
>
> (ii) P8,870,537.77, pertaining to the difference between the amount of P28,912,016.82, representing the duly substantiated excess and unutilized input VAT on [CCC's] importation of goods attributable to petitioner's zero-rated sales for the 2nd quarter of taxable year 2016 as found by the Court, and the amount of P20,041,479.05 as indicated in (i).
>
> **SO ORDERED**.

Considering its *Petition for Review* was only **partially granted**, CCC filed a *Motion for Reconsideration (With Motion for Leave of Court to Reopen the Case for the Recall of a Witness)* on March 12, 2021.

CCC's *Motion for Reconsideration* before the Court in Division prays for (i) the reconsideration and reversal of the Decision of the Court in Division; (ii) the rendition of a new one ordering respondent to refund or issue a Tax Credit Certificate to petitioner, in the amount of P22,128,978.80; and, (iii) the reopening of the case to allow petitioner to recall the Independent Certified Public Accountant (ICPA) to further elaborate on the ICPA's findings and conclusions that petitioner's sales were all zero-rated, in the interest of substantial justice and to afford petitioner full opportunity to present its case.

Relative thereto, on December 16, 2021, the Court in Division promulgated the assailed *Amended Decision* partially granting CCC's *Motion for Reconsideration, viz.*:

WHEREFORE, in light of the foregoing considerations, [CCC's] Motion for Leave of Court to Reopen the Case for the Recall of a Witness, is **DENIED** for lack of merit.

However, [CCC's] Motion for Reconsideration is **PARTIALLY GRANTED**. Accordingly, the Court's Decision dated February 2, 2021, is hereby amended to read as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**.
>
> [...] Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** to [...] Carmen Copper Corporation the total amount of P28,927,621.59 representing petitioner's excess and unutilized input VAT on importations attributable to zero-rated sales for the 2nd quarter of taxable year 2016, broken down as follows:
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> (iii) P20,041,479.05, granted per Letter dated September 19, 2018 of Ms. Erlinda A. Simple, Assistant Commissioner of Internal Revenue; and,
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> a. P8,886,142.54, pertaining to the difference between the amount of P28,927,621.59, representing the duly substantiated excess and unutilized input VAT on [CCC's] importation of goods attributable to [CCC's] zero-rated sales for the 2nd quarter of taxable year 2016 as found by the Court, and the amount of P20,041,479.05 as indicated in (i).
>
> **SO ORDERED**.

SO ORDERED.

The *Amended Decision* ruled that petitioner failed to justify its *Motion for Leave of Court to Reopen the Case for the Recall of a Witness* as incorporated in its *Motion for Reconsideration*. It is important to underscore that **not all reliefs** prayed for by CCC in its *Motion for Reconsideration* were granted.

Notably, the *Amended Decision* increased the refundable amount owed to CCC from P28,912,016.82 to P28,927,621.59. The Court in Division re-examined the pieces of evidence,

[initials]

particularly the Summary of inward remittances of zero-rated sales, along with the relevant sales invoices and Certifications of inward remittances. This led the Court in Division to reduce the disallowance of zero-rated sales, which, in turn, increased CCC's valid zero-rated sales to P1,391,070.87.

Having noted the ruling in the *Amended Decision*, particularly the reliefs granted and denied and the change in the refundable amount, We rule that the *Amended Decision* is a proper subject of a motion for reconsideration prior to filing a petition for review before the Court *En Banc*.

In *Asiatrust*,[11] the motion for reconsideration of Asiatrust was partially granted by the Court in Division, but before appeal before the Court *En Banc*, Asiatrust filed a *Motion for Reconsideration*, which the Supreme Court did not find improper. Accordingly, notwithstanding the fact that the *Amended Decision* involved a grant of Asiatrust's *Motion for Reconsideration*, Asiatrust still filed a *Motion for Partial Reconsideration* against the *Amended Decision*, and the Supreme Court did not consider such as a prohibited second motion for reconsideration.

The concept of an amended decision being a different decision is provided in the earlier case of *CE Luzon Geothermal Power Co., Inc. v. Commissioner of Internal Revenue (CE Luzon)*,[12] where the Supreme Court ruled that there is no violation of the rule against a second motion for reconsideration in filing a motion for reconsideration against an amended decision as it was "a different decision." This is despite CCC's argument that an amended decision is not a term defined in RA No. 9828 and that an amended decision is defined in the same section in the Internal Rules of the Court of Tax Appeals as a resolution.

Notably, in *CE Luzon*, similar to the instant case, the Court in Division originally ordered the CIR to issue a tax credit certificate in the reduced amount of P14,879,312.65 in the *Decision*, but the amount was increased to P17,277,938.47 with the promulgation of the *Amended Decision*.

[11] *Supra* at note 7.
[12] G.R. Nos. 200841-42, August 26, 2015.

Reading *CE Luzon* in connection with *Asiatrust* leads this Court to conclude that a motion for reconsideration is required against the instant Amended Decision of the Court in Division before filing a petition for review before the Court *En Banc.* To reiterate, failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that filing a prior motion is mandatory, and not merely directory.[13]

Further, the observation of Presiding Justice Roman G. Del Rosario in his *Separate Opinion* is well-taken and is adopted by the Court *En Banc.* Accordingly, ***even if*** this Court allows the filing of the *Petition for Review* before the Court *En Banc,* notwithstanding CCC's failure to file a motion for reconsideration against the *Amended Decision* of the Court in Division, CCC's *Petition for Review* would still have been **dismissed** on the ground of belated filing.

We quote Presiding Justice Del Rosario's *Separate Opinion*:

> An examination of the records shows that CCC received the assailed Amended Decision on February 9, 2022. Counting fifteen (15) days therefrom, petitioner had until February 24, 2022 within which to file its Petition for Review with the CTA En Banc. On February 24, 2022, CCC filed a Motion for Extension of Time to File Petition for Review. In the Minute Resolution dated February 28, 2022, petitioner was granted a final and non-extendible period of fifteen (15) days from February 24, 2022, or until March 11, 2022, within which to file its Petition for Review. CCC's Petition for Review, though filed via LBC Express on March 11, 2022, was received by the Court only on March 14, 2022.
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> The date of actual receipt by the Court of pleadings filed through a private letter-forwarding agency (which is not a Supreme Court accredited courier) is deemed the date of filing of that pleading. In *Exequiel Sigre, et al. vs. Provincial Government of Zamboanga Del Sur, represented by Antonio H. Cerilles,* the Supreme Court held:
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>> "The established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court; in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading. As correctly found by the CA,

[13] *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*, supra at note 7.

> petitioners filed their petition via LBC, a private courier, which delivered the pleading to the CA only on December 14, 2017, a day after the last day of filing. Clearly, the petition was filed out of time. Further, as pointed out by the CA, its receipt of the deficient amount in the docket fees will not cure the defect in the belated filing of the petition."

> LBC Express, a private courier, was only approved as an accredited courier by the Supreme Court on February 1, 2023. Thus, the date of receipt by the Court of CCC's Petition for Review on March 14, 2022 is considered as the date of filing thereof.

> Since the present Petition for Review was filed beyond the fifteen (15)-day reglementary period to appeal, the CTA En Banc is without jurisdiction to take cognizance of the case. Thus, the Court cannot decide the case on the merits as the only power left with it is to dismiss the case. [*Citations omitted.*]

To reiterate, the right to appeal is neither a natural nor a part of due process. It is merely a statutory privilege, and it may be exercised *only* in the manner and in accordance with the provisions of the law.[14] Accordingly, the rules, particularly on the statutory requirement for perfecting an appeal, must be **strictly** followed.[15]

The CIR's Motion for Reconsideration

At the onset, We note that an examination of the CIR's *Motion for Reconsideration* shows that the arguments raised are mere reiterations of the arguments that have been raised in its *Petition for Review* and have been thoroughly considered, resolved, and passed upon by this Court in the Assailed Decision.

It is well-settled that a motion for reconsideration containing a mere reiteration or rehash of grounds and arguments that have already been considered, weighed, passed upon, and resolved by the court before the *Decision* sought to be reconsidered is rendered does not need a new judicial

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[14] *Commissioner of Internal Revenue v. Fort Bonifacio Development Corp.*, G.R. No. 167606, August 11, 2010.
[15] *Id.*

determination.[16] Therefore, there is no necessity to discuss and rule again on these grounds since this would be a useless formality of ritual invariably involving merely a reiteration of the reasons for rejecting the arguments advanced by the movant already set forth in the judgment.[17]

In *Shangri-La International Hotel Management v. Developers Group of Companies, Inc.*,[18] the Supreme Court pronounced that it is incumbent upon the movant to convince the Court that certain findings or conclusions are contrary to law, to wit:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
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> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

It is already settled that if the issues raised in the motion for reconsideration are mere reiterations of those that have already been passed upon and adjudged as unmeritorious by the Court, these cannot be regarded as substantial and no longer require another full-blown discussion. Any further discourse will only be unnecessary and repetitive.[19]

Accordingly, We maintain our ruling that input taxes that bear either a direct or indirect connection with a taxpayer's zero-rated sales satisfy the requirement of the law for purposes

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[16] *People v. Agacer*, G.R. No. 177751 (Resolution), January 7, 2013 citing *People v. Larrañaga*, G.R. Nos. 138874-75, July 21, 2005; *Madeleine Mendoza-Ong v. Hon. Sandiganbayan, et al.*, G.R. Nos. 146368-69 (Resolution), October 18, 2004.
[17] *People v. Agacer*, G.R. No. 177751 (Resolution), January 7, 2013 citing *People v. Larrañaga*, G.R. Nos. 138874-75, July 21, 2005 and *Ortigas Land Co. Ltd. Partnership v. Judge Velasco*, G.R. No. 109645 (Resolution), March 4, 1996.
[18] *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*, G.R. No. 159938 (Resolution), January 22, 2007.
[19] *Social Justice Society Officers v. Lim*, G.R. Nos. 187836 & 187916 (Resolution), March 10, 2015, 755 PHIL 323-335.

of the instant refund claim and that this Court can consider evidence not introduced at the administrative level.

WHEREFORE, premises considered, the Commissioner of Internal Revenue's *Motion for Reconsideration (Re: Decision promulgated 19 September 2023)* and Carmen Copper Corporation's *Motion for Reconsideration* are hereby **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

ON LEAVE
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice