REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 1871
(CTA Case No. 9076)

-versus-

KEANSBURG MARKETING CORPORATION,
Respondent.

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KEANSBURG MARKETING CORPORATION,
Petitioner,

CTA *EB* NO. 1872
(CTA Case No. 9076)

-versus-

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 12 2021 4:12 p.m.

x- x

RESOLUTION

MANAHAN, J.:

To be resolved before this Court are the following: (1) petitioner Commissioner of Internal Revenue (CIR)'s **Motion for Reconsideration**[1] posted on June 23, 2020 and received by this Court on July 3, 2020 under CTA EB No. 1871, without respondent Keansburg Marketing Corporation (KMC)'s comment, seeking for the reconsideration and setting aside of this Court's *Decision* dated March 12, 2020 (Assailed

[1] *Rollo*, CTA EB No. 1860, pp. 131-155.

Decision) and the issuance of a new one finding respondent KMC liable for the assessed deficiency value added tax, inclusive of penalties, and (2) petitioner KMC's **Motion for Partial Reconsideration (of the Decision promulgated on March 12, 2020)**[2] filed on June 24, 2020 under CTA EB No. 1872, without respondent CIR's comment, seeking for the reconsideration of said Assailed Decision and cancellation of all respondent's assessments and penalties.

The dispositive portion of the abovementioned Assailed Decision is quoted below:

> "**WHEREFORE**, premises considered, the instant Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the assailed January 5, 2018 *Decision*[3] and May 23, 2018 *Resolution*[4] are hereby **AFFIRMED.**
>
> However, in view of the issuance of Revenue Regulations (RR) No. 21-2018 with respect to the computation of deficiency and delinquency interest, the assailed *Decision* is **MODIFIED** with respect to interests, as follows:
>
>> **WHEREFORE,** the instant Petition for Review filed by petitioner Keansburg Marketing Corporation on June 22, 2015, is **PARTIALLY GRANTED.** Consequently, the assessment issued by respondent Commissioner of Internal Revenue against petitioner for taxable period January 1 to June 30, 2012 for deficiency Value-Added Tax is **UPHELD IN PART.** Accordingly, petitioner is hereby **DIRECTED TO PAY** respondent the amount of **TWENTY-ONE MILLION FIVE HUNDRED FIFTY-EIGHT THOUSAND FORTY-TWO PESOS AND FORTY-NINE CENTAVOS (₱21,558,042.49)**, representing basic deficiency Value-Added Tax and the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest and twenty percent (20%) delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

Basic Deficiency VAT	₱ 6,334,026.54
Add: 25% Surcharge	1,583,506.64
20% Deficiency Interest *(₱6,334,026.54 x 20% x 852/365 days)*	2,957,035.95

[2] *Rollo,* CTA EB No. 1860, pp. 131-155.
[3] *Supra,* Note 4.
[4] *Supra,* Note 5.

Total Amount Due as of November 24, 2014	**₱10,874,569.13**
Add: 20% Deficiency Interest *(₱6,334,026.54 x 20% x 1,133/365 days)*	3,932,302.50
20% Delinquency Interest *(₱10,874,569.13 x 20% x 1,133/365 days)*	6,751,170.86
Total Amount Due as of December 31, 2017	**₱21,558,042.49**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the ₱10,874,569.13 total amount due as of November 24, 2014 computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED."

Petitioner CIR's Motion for Reconsideration under CTA EB No. 1871

Petitioner CIR insists that the use of Summary List of Sales and Purchases (SLSP) as basis of his assessment does not need a third-party certification or confirmation. The assessment against respondent KMC's underdeclared sales for the period January 1, to June 30, 2012 was valid and presumed to be correct in the absence of any proof of irregularities in the said assessment.

Upon perusal of the records of the case, the abovementioned arguments cited in the instant motion, as found in pages 3 to 6 thereof, are the same arguments he raised in his Petition for Review (see pages 6 to 8 thereof) which were already disposed of in the assailed Decision, hence, the same are mere reiteration or rehash arguments.

The citation of the other documentary evidence, *i.e.* BIR Electronic Letter of Authority (Exhibit "R-2"), BIR Checklist of Requirements for VAT Audit (Exhibit "R-3"), BIR First Request for Presentation of Records dated April 1, 2013 (Exhibit "R-4"), BIR Second and Final Notice dated April 16, 2013 (Exhibit "R-5"), BIR Letter dated April 22, 2014 (Exhibit "R-6"), and Subpoena Duces Tecum dated July 23, 2013 (Exhibit "R-7"), did not satisfy this Court's requirement for the verification of the Third Party Information (TPI) data that served as the basis for respondent's assessment.

In *Madeleine Mendoza-Ong v. Hon. Sandiganbayan and People of the Philippines*[5], the Supreme Court ruled that courts need not tackle those rehash or reiterated arguments because it will be useless to reiterate itself, to wit:

> "Concerning the first ground abovecited, the Court notes **that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit**. Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court's Resolution. **It would be a useless ritual for the Court to reiterate itself.**" (*Emphasis supplied*)

Thus, this Court will no longer discuss those same arguments raised in the Petition for Review.

Petitioner KMC's Motion for Partial Reconsideration under CTA EB No. 1872

Petitioner KMC argues that the Assailed Decision misses a point of jurisdictional importance when it failed to recognize that the assessment issued by respondent CIR failed dismally to inform it of the exact nature of disallowance of input value-added tax (VAT), thus, violating its right to due process under Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended. Petitioner is referring to the sweeping disallowance of its input VAT.

A closer look at the Assailed Decision reveals that the abovementioned argument as to the violation of its right to due process was not included among the arguments it posited in its Petition for Review. In the instant petition, petitioner KMC merely questions the computations of the VAT assessment without imputing any violation of its right to due process.

Even in the Assailed Decision and Resolution of the Court in Division, never did petitioner KMC raise the issue of violation of its right to due process but only on the procedural aspect of computation of VAT assessment and the

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[5] G.R. Nos. 146368-69, October 18, 2004.

disallowance of its input VAT. Hence, this is a newly raised issue in this particular appeal.

In *Development Bank of the Philippines v. West Negros College, Inc.*[6], the Supreme Court ruled that the courts are precluded from entertaining issues raised by any party in its motion for reconsideration that were not raised in its original pleadings, to wit:

> "... Moreover, it is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal..."

Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been made aware of said new theory. To permit petitioner KMC in this case to change its theory on appeal would thus be unfair to respondent CIR, and offend the basic rules of fair play, justice and due process.[7] Petitioner KMC had ample time and opportunity to raise this alleged violation of its right to due process by respondent at the administrative level at the earliest, as well as at the major stages of the judicial proceedings, but it did not.

Thus, this Court will refrain from making any further disquisition on this matter.

WHEREFORE, premises considered, petitioner CIR's *Motion for Reconsideration* under CTA EB No. 1871 and Petitioner KMC's *Motion for Partial Reconsideration (of the Decision promulgated on March 12, 2020)* under CTA EB No. 1872 are hereby **DENIED** for lack of merit.

SO ORDERED.

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[6] G.R. No. 152359, May 21, 2004.

[7] *China Trust (Phils.) Commercial Bank v. Philip Turner*, G.R. No. 191458, July 3, 2017, citing *Philippine Ports Authority v. City of Iloilo*, G. R. No. 109791, July 14, 2003 (453 Phil. 927).

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice