REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2258** *(CTA Case No.9661)*
-*versus*-	Present: **DEL ROSARIO, P.J., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
MSCI HONG KONG LIMITED, *Respondent.*	Promulgated: JUL 12 2022 2:13pm

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RESOLUTION

MODESTO-SAN PEDRO, J.:

Before this Court *En Banc* is petitioner's **Motion for Reconsideration**, filed on 10 January 2022 ("Motion for Reconsideration"),[1] with respondent's **Comment (Re: Motion for Reconsideration dated January 10, 2022)** ("Comment").[2]

In the Motion for Reconsideration, petitioner alleges that:

1. The Honorable Court *En Banc* erred in considering documentary evidence which was not formally offered. The allegation in issue is about the ownership of respondent, which supposedly would be addressed by Exhibit "P-2". However, said exhibit was never formally offered. During the Commissioner's Hearing on 24 January 2018, it was just marked as "Provisionally Marked", and

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[1] Records, pp. 111-121.
[2] *Id.*, pp. 144-151.

this marking was not rectified, as per the Court in Division's Resolution, dated 4 July 2018;

2. It is true that, in his Memorandum, petitioner acknowledged that respondent is a Philippine Branch of MSCI Hong Kong, but that does not apply to MSCI, Inc. At this point, no one can tell if MSCI Hong Kong is wholly owned by MSCI, Inc. as Exhibit "P-2", the supposed evidence thereto, was not formally offered, and though the same is on record, it does not carry probative value;

3. Respondent failed miserably to dispose of the burden of proving entitlement to a refund;

4. Respondent failed to satisfy the second requisite for entitlement to refund, that the recipient of its services must be a non-resident foreign corporation not engaged in trade or business in the Philippines; and

5. In a long line of cases decided by the Supreme Court, it has been provided that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. As respondent failed to definitely prove that the payor/ recipient of the services must be another person doing business outside the Philippines, services rendered by respondent to MSCI, Inc. cannot qualify for VAT zero rating.

Contrarily, respondent counter-argues as follows:

1. The case of ***Institutional Shareholder Services, Inc. Philippine ROHQ v. Commissioner of Internal Revenue ("ISSI Case")***[3] is not applicable to the instant case since, unlike ISSI – ROHQ, respondent rendered services not to its parent company in Hong Kong, but to MSCI, Inc. and Investment Property Databank UK Limited ("IPD UK"), which are mere affiliates of respondent;

2. Respondent sufficiently established that MSCI Hong Kong Limited, not MSCI, Inc., is the parent company of respondent;

3. Respondent sufficiently established its claim for refund; and

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[3] CTA Case No. 7662, 3 June 2010.

4. Respondent sufficiently established that the recipient of its services is a non-resident foreign corporation not engaged in trade or business in the Philippines.

Following a studied review of the arguments, we **DENY** the Motion for Reconsideration for lack of merit.

The Decision sought to be reconsidered already extensively discussed how respondent rendered service to a foreign entity not doing business within the Philippines. Not only did the Court En Banc uphold the findings of the Court in Division on this score, it even proceeded to independently discuss how the pieces of evidence established that respondent is, indeed, the Philippine Branch of MSCI Hong Kong Limited, a Hong Kong based entity, and not a subsidiary of MSCI, Inc., a company organized and existing under the laws of Delaware, USA. Against these exhaustive discussion, no new argument has been raised by petitioner.

With respect to petitioner's contention that this Court *En Banc* erred in considering Exhibit "P-2" in determining respondent's actual ownership, this position drastically departs from the one he took in his Petition before the Court *En Banc*. In the Petition, petitioner alleged that respondent intentionally suppressed Exhibit "P-2" to cover up vital information about the eventual ownership of respondents, though he did not explain how the contents of the Exhibit in question would show such eventual ownership. However, in the Motion for Reconsideration, petitioner is now insisting that the Court *En Banc* took into account Exhibit "P-2" in ruling on respondent's actual ownership. This inconsistency and self-contradiction in petitioner's arguments does not escape the Court's notice.

At any rate, the Court *En Banc* did not solely consider Exhibit "P-2" in granting a VAT refund in favor of respondents. Indeed, even without Exhibit "P-2", respondent had adequately proven through its evidence that it is providing service to an entity wholly distinct from it and which is not doing business in the Philippines.

As to the other matters raised, this Court *En Banc* reiterates its ruling that it agrees with the findings by the Court in Division (which was a result of its elaborate examination of the evidence on record) that respondent has adduced sufficient proof to prove its entitlement to an input VAT refund in the total amount of P6,297,480.35, representing its unutilized and excess input VAT attributable to its zero-rated sales for the four (4) quarters of CY 2015 as duly found by the Court in Division. Again, petitioner has failed to introduce any argument or proof to deviate from this ruling.

In ***Ortigas and Company Limited Partnership vs. Judge Tirso Velasco and Dolores V. Molina, and Dolores V. Molina vs. Hon. Presiding Judge, RTC, Quezon City, Br. 105, and Manila Banking Corporation***,[4] the Supreme Court had the occasion to rule in this wise:

> "*Effect, and Disposition of*
> *Motion for Reconsideration*
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> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards be issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, ART. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc."

Moreover, in ***H. Harry L. Roque, Jr., et al. v. Commission on Election, represented by Hon. Chairman Jose Melo, et al.***,[5] the Supreme Court *En Banc* ruled that whenever the issues raised in the Motion for Reconsideration have already been addressed and passed upon in the Decision, and the Motion for Reconsideration failed to raise matters which are substantially plausible or compellingly persuasive, enough to lead the Court to rule in favor of the desired course of action, then the Motion for Reconsideration will be denied by the Court, to wit:

> "Petitioners' above contention, as well as the arguments, citations, and premises holding it together, is a rehash of their previous position articulated in their memorandum in support of their petition. They have been considered, squarely addressed, and found to be without merit in the Decision subject hereof. The Court is not inclined to embark on another extended discussion of the same issue again...
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> xxx xxx xxx
>
> While a motion for reconsideration may tend to dwell on issues already resolved in the decision sought to be reconsidered—and this should not be an obstacle for a reconsideration—the hard reality is that petitioners have failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.

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[4] G.R. Nos. 109645 and 112564, Resolution, 4 March 1996.
[5] G.R. No. 188456, Resolution, 10 February 2010

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> WHEREFORE, the instant separate motions for reconsideration of the main and intervening petitioners are DENIED."

This was reiterated in ***Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.***:[6]

> "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."

A perusal of the Motion for Reconsideration would show that the arguments raised therein have already been raised by petitioner in his Petition filed before this Court *En Banc*. As such, these have already been sufficiently passed upon, discussed, threshed out and judiciously resolved in the Decision sought to be reconsidered. The Motion for Reconsideration discloses no cogent reason to disturb the findings and conclusions which this Court made in said Decision.

Applying the judicial pronouncements, above, nothing is left for this Court to do but to deny the same.

WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[6] G.R. No. 159938, Resolution, 22 January 2007.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice