CTA Form No. 8 (For DCC)

17-000464-0091

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 9736

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. NIKI BERYL B. DELA CRUZ
Bureau of Internal Revenue
Rm. 703, Litigation Division, BIR National Office Bldg.
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

BANIQUED & BELLO
Suite 803, 8th Floor, Jollibee Centre
San Miguel Avenue, Ortigas Center
1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **February 26, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 27, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9736

Members:

DEL ROSARIO, *P. J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

FEB 2 6 2024 1:15PM

x - x

RESOLUTION

REYES-FAJARDO, *J.*:

For the Court's resolution are the following:

1. petitioner's **Motion for Reconsideration (of Decision dated August 10, 2023)** filed through accredited courier service provider on September 1, 2023, with respondent's **Comment/Opposition (Re: Petitioner's Motion for Reconsideration dated August 31, 2023)** filed through electronic mail on October 4, 2023;

2. petitioner's **Urgent Omnibus Motion A. To Suspend Collection of Taxes; B. To Consider the Bond Requirement as Deemed Satisfied; and C. To Declare as Null and Void and Order the Withdrawal and Cancellation of the Warrant of Distraint and/or Levy dated September 5, 2023 (With Extremely Urgent Prayer for Issuance of *Ex Parte* Temporary Suspension Order**

and Suspension Order after Hearing) filed on September 11, 2023, with respondent's **Memorandum [Re: Petitioner's Urgent Omnibus Motion A: To Suspend Collection of Taxes; B. To Consider the Bond Requirement as Deemed Satisfied; and C. To Declare as Null and Void and Order the Withdrawal and Cancellation of the Warrant and Distrain and/or Levy dated September 5, 2023]**, in lieu of Comment, filed on October 9, 2023, followed by petitioner's **Memorandum** filed on October 10, 2023;

3. petitioner's **Formal Offer of Evidence** filed on October 10, 2023, with respondent's **Comment/Opposition (to Petitioner's Formal Offer of Evidence)** filed on October 12, 2023; and,

4. petitioner's **Motion to Withdraw Urgent Omnibus Motion dated September 11, 2023** filed on December 20, 2023.

Petitioner's Motion for Reconsideration (of Decision dated August 10, 2023)

On August 10, 2023, the Court rendered a Decision (assailed Decision),[1] the *fallo* of which reads:

> **WHEREFORE**, the Petition for Review dated December 18, 2017, filed by Oceanagold (Philippines), Inc. is **DENIED** for lack of merit.
>
> Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **TWO HUNDRED SIXTY-TWO MILLION THREE HUNDRED EIGHTY-SIX THOUSAND FOUR HUNDRED SEVENTY-EIGHT PESOS AND SEVENTY-EIGHT CENTAVOS (₱262,386,478.78)**, inclusive of surcharge and deficiency and delinquency interests imposed under Sections 248(A) and 249(B) of the NIRC of 1997, as amended, computed as follows:

Basic Excise Tax Due	₱ 125,177,799.00
Add: 25% Surcharge	31,294,449.75
20% Deficiency Interest from January 1, 2014 to November 20, 2017 *[₱125,177,799.00 x 20% x 1,420/365 days]*	97,398,616.21

[1] Docket -Volume V, pp. 2137 to 2157.

Total Amount Due as of November 20, 2017	**₱253,870,864.96**
Add: 20% Deficiency Interest from November 21, 2017 to December 31, 2017 *[₱125,177,799.00 x 20% x 41/365 days]*	2,812,213.57
20% Delinquency Interest from November 21, 2017 to December 31, 2017 *[₱253,870,864.96 x 20% x 41/365 days]*	5,703,400.25
Total Amount Due as of December 31, 2017	**₱262,386,478.78**

In addition, petitioner should be **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the ₱253,870,864.96 total amount due as of November 20, 2017, or an amount of ₱83,464.39 per day computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations No. 21-2018.

Lastly, pursuant to Section 13 of RA No. 9282, this Court authorizes respondent to seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property, and/or to levy the real property, of petitioner, in sufficient quantity to satisfy the taxes herein ordered to be paid, and the increments thereto incident to delinquency.

SO ORDERED.

In the assailed Decision, the Court upheld respondent's deficiency excise tax (ET) assessment against petitioner covering taxable year (TY) 2013 based on the following grounds: *first,* petitioner's date of commencement of commercial operation started on October 11, 2005, or the date the Mines and Geosciences Bureau (MGB) approved its Partial Declaration of Mining Feasibility pursuant to Section 5(i) of Department of Environment and Natural Resources Administrative Order (DAO) No. 96-40. Counting five (5) years therefrom, the recovery period ended on October 11, 2010. As such, there is no legal impediment for the Bureau of Internal Revenue (BIR) to assess petitioner ET covering TY 2013; *second,* petitioner failed to submit proof that the recoverable pre-operating expenses were duly approved by the Secretary of the Department of Environment and Natural Resources, as recommended by the Director of the MGB; nor, is it shown that these expenses were validated by the government or its designated representative or auditor under Section 7(b) of DAO No.

12-2007; and, *third,* the merits of this case can be fully addressed without the need to touch on the issue of constitutionality of RMC No. 13-2007 raised by petitioner.

In its Motion for Reconsideration (of Decision dated August 10, 2023),[2] petitioner argues that: *first,* the 5-year recovery period should be counted from the date of the "Commencement of Production," which in turn, can only commence if there is production of sufficient quantity of materials; *second,* DAO No. 12-07, which requires the Secretary of DENR's approval of recoverable pre-operating expenses is not applicable to petitioner; and, *third,* the challenge on the constitutionality of Revenue Memorandum Circular No. 17-2013 is the *litis mota* in this case.

In his Comment,[3] respondent counters that petitioner's recovery period commenced on October 11, 2005, and ended on October 11, 2010 as correctly pointed out by the Court.

The instant Motion is denied.

After a careful review of the records of the case, the Court finds no compelling reason to modify or reverse the assailed Decision. Petitioner's contentions are mere reiterations of matters which have already been exhaustively considered and passed upon by the Court in the assailed Decision. The pronouncement in *Social Justice Society (SJS) Officers, et al. v. Lim,*[4] is instructive:

> The grounds relied on being mere reiterations of the issues already passed upon by the Court, there is no need to "cut and paste" pertinent portions of the Decision or re-write the ponencia in accordance with the outline of the instant motion.
>
> As succinctly put by then Chief Justice Andres R. Narvasa in Ortigas and Co. Ltd. Partnership v. Judge Velasco on the effect and disposition of a motion for reconsideration:
>
> > The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the

---

2 Docket -Volume V, pp. 2158 to 2189.
3 *Id.*, unpaged.
4 G.R Nos. 187836 & 187916, March 10, 2015.

> 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 the 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.

Petitioner's Urgent Omnibus Motion and Motion to Withdraw Urgent Omnibus Motion dated September 11, 2023

On September 11, 2023, petitioner filed its Urgent Omnibus Motion to suspend the collection of taxes, consider the bond requirement as deemed satisfied, and to declare as null and void and, order the withdrawal and cancellation of the Warrant of Distraint and/or Levy (WDL) dated September 5, 2023.

Thereafter, on December 20, 2023, petitioner filed a *Motion to Withdraw Urgent Omnibus Motion dated September 11, 2023.* Petitioner states that it filed an offer of compromise settlement of deficiency tax assessment for TY 2013 with a request for the lifting of the WDL and warrants of garnishment with the BIR and that it paid the amount of ₱125,177,799.00 equal to one hundred percent (100%) of the basic tax assessed. Petitioner further avers that the BIR lifted the warrants of garnishment while its application for compromise settlement is currently pending approval by the National Evaluation Board. It contends that the lifting of the warrants of garnishment removed the urgent necessity for the suspension order.

WHEREFORE, premises considered:

1. Petitioner's Motion for Reconsideration [of Decision dated August 10, 2023] is **DENIED** for lack of merit;

2. Petitioner's Motion to Withdraw Urgent Omnibus Motion dated September 11, 2023 is **GRANTED**. Accordingly, petitioner's Urgent Omnibus Motion A. To Suspend Collection of Taxes; B. To Consider the Bond Requirement as Deemed Satisfied; and C. To Declare as Null and Void and Order the Withdrawal and Cancellation of the Warrant of Distraint and/or Levy dated September 5, 2023 and petitioner's Formal Offer of Evidence is considered **WITHDRAWN** and rendered **MOOT**; and,

3. Petitioner's Formal Offer of Evidence in relation to its Urgent Omnibus Motion is **NOTED WITHOUT ACTION** for having become **MOOT**.

SO ORDERED.

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

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice