REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MINDANAO I GEOTHERMAL PARTNERSHIP, Petitioner, -versus- **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB No. 926** (CTA Case Nos. 7596, 7648, 7666)
COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- **MINDANAO I GEOTHERMAL PARTNERSHIP,** Respondent.	**CTA EB No. 927** (CTA Case Nos. 7596, 7648, 7666) Present: Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, JJ. **Promulgated:** SEP 30 2013 9:05 a.m.

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DECISION

CASTANEDA, JR., *J*.:

Before Us are consolidated Petitions for Review, docketed as CTA EB No. 926[1] filed by Mindanao I Geothermal Partnership (MIGP) through registered mail posted on August 30, 2012 and CTA EB Case No. 927[2] filed by the Commissioner of Internal Revenue (CIR) on August 16, 2012.

The first petition, CTA EB No. 926, seeks to set aside the Resolution[3] of the Special First Division promulgated on July 26, 2012; to partially reconsider the

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[1] *Rollo* (CTA EB No. 926), pp. 136-246, with Annexes.
[2] *Rollo* (CTA EB No. 927), pp. 1-32, with Annexes.
[3] *Rollo* (CTA EB No. 926), pp. 202-205.

Amended Decision[4] dated February 15, 2012; and to grant a refund or tax credit certificate in the additional amount of P1,623,630.34.

The second petition, CTA EB No. 927, seeks the reversal and setting aside of the same Amended Decision dated February 15, 2012 and Resolution dated July 26, 2012; and prays that the entire claim for refund be denied.

THE FACTS

The facts of the case as found by the Special First Division are as follows:[5]

Mindanao I Geothermal Partnership (Petitioner) is a partnership duly registered with the Securities and Exchange Commission, with principal address at 36th Floor, Tower 1, Enterprise Center, 6766 Ayala Avenue, Makati City. It is a VAT-registered entity, with Tax Identification No. 004-712-984-000, as evidenced by its Certificate of Registration No. 8RC0000017055.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner claims that with the passage of Republic Act (R.A.) No. 9136 or the "Electric Power Industry Reform Act of 2001 (EPIRA)", its sale of generated power is now VAT zero-rated. According to petitioner, it always has a resultant excess creditable input tax, considering that its principal revenue-generating activity is its sale of generated power or electricity to the National Power Corporation (NPC) for and in behalf of the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC), which are all duly reported in its Quarterly VAT Returns filed with the BIR.

Petitioner's Quarterly VAT Returns for taxable year 2005 were filed on the following dates:

CTA CASE NO.	PERIODS COVERED 2005	DATE OF FILING	
		ORIGINAL RETURN	AMENDED RETURN
7596	1st Quarter	April 22, 2005	January 23, 2006
7648	2nd Quarter	July 22, 2005	January 23, 2006
7666	3rd Quarter	October 11, 2005	January 23, 2006
7666	4th Quarter	January 23, 2006	February 15, 2006

On December 29, 2006, petitioner filed with respondent its application for refund or issuance of tax credit certificate for its excess input tax. Thereafter, or on March 30, 2007, petitioner filed with respondent an amended application for refund

[4] *Rollo* (CTA EB No. 926), pp. 6-16. Penned by Associate Justice Lovell R. Bautista, with retired Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, concurring.
[5] Division Docket (CTA Case No. 7596),pp. 443-453.

> or issuance of tax credit certificate arising from its alleged excess and unutilized creditable input tax in the total amount of P8,584,567.89 for the four quarters of taxable year 2005.
>
> Due to respondent's inaction on petitioner's administrative claim, petitioner filed three separate Petitions for Review on March 30, 2007, covering the first quarter of 2005; June 29, 2007, covering the second quarter of 2005; and August 6, 2007, covering the third and fourth quarters of 2005. The said Petitions were consolidated via Resolution dated August 31, 2007 inasmuch as they involved the same parties and the same subject matter.

For CTA Case No. 7596, the then CIR filed his Answer[6] on May 23, 2007 and for CTA Case Nos. 7648 and 7666 the Consolidated Answer[7] was filed on December 6, 2007.

During trial, MIGP presented and offered its documentary and testimonial evidence; while the CIR manifested that he is submitting the case for decision. On October 4, 2010, the CTA Special First Division (Court in Division) rendered a Decision[8] which denied the Petitions for Review for lack of merit.

Aggrieved, MIGP filed through registered mail a Motion for New Trial[9] posted on October 21, 2010 while the CIR filed through registered mail an Opposition (Re: Motion for New Trial)[10] posted on November 15, 2010. In a Resolution[11] promulgated on January 6, 2011, the Court in Division granted the Motion for New Trial. The Decision dated October 4, 2010 was set aside and the case was set for hearing for the presentation of MIGP's additional evidence.

In the Supplemental Offer of Documentary Evidence, MIGP offered the affidavit of Maria Cecilia P. Olarte[12] and the Certificate of Compliance[13] with COC No. 03-10-GXT26-0026 dated October 15, 2003. In a Resolution[14] dated March 29, 2011, the court admitted both documents subject to its final evaluation and/or appreciation.

After both parties filed their respective memoranda, the case was submitted anew for decision. The Court in Division issued an Amended Decision on February 15, 2012, the dispositive portion is as follows:

> **WHEREFORE,** the Petition for Review is hereby PARTIALLY GRANTED. Respondent is hereby ORDERED TO REFUND or ISSUE

[6] Division Docket (CTA Case No. 7596), pp. 57-64.
[7] Division Docket (CTA Case No. 7648), pp. 80-89.
[8] Division Docket (CTA Case No. 7596), pp. 442-466.
[9] *Ibid.*, pp. 494-518, with Annexes.
[10] *Ibid.*, pp. 522-530.
[11] *Ibid.*, pp. 534-537.
[12] *Ibid.*, pp. 548-550, Exhibit "LL"
[13] *Ibid.*, pp. 544-547, Exhibit "MM"
[14] *Ibid.*, pp. 558-559.

> A TAX CREDIT CERTIFICATE in favor of petitioner the reduced amount of P 5,945,318.38 representing unutilized excess input VAT attributable to zero-rated receipts from power generation services rendered for the year 2005.
>
> **SO ORDERED.**[15]

Dissatisfied with the Amended Decision, the CIR filed a Motion For Reconsideration[16] on March 8, 2012 while MIGP filed through registered mail a Motion for Partial Reconsideration with Motion to Transfer Marking of Exhibit "II", "II-1", "JJ" and "JJ-1"[17] posted on March 8, 2012. Subsequently, MIGP filed through registered mail its Comment/Opposition (To Respondent's Motion for Reconsideration)[18] posted on April 18, 2012.

In a Resolution[19] dated June 6, 2012, the Court in Division granted MIGP's Motion to Transfer Marking of Exhibit[s] "II", "II-1", "JJ" and "JJ-1" while the resolution of CIR's Motion for Reconsideration and MIGP's Motion for Partial Reconsideration were held in abeyance. The case was then set for Commissioner's Hearing on June 28, 2012 for the transfer of markings of the said exhibits.

Finally, on July 26, 2012, the Court in Division promulgated a Resolution denying both motions, to wit:

> **WHEREFORE,** the "Motion for Reconsideration" filed by respondent, and the "Motion for Partial Reconsideration" filed by petitioner, are hereby **DENIED.**
>
> **SO ORDERED.**[20]

Hence, these Petitions for Review *en banc.*

THE ISSUES

The assigned errors/grounds proffered by the parties in their respective Petitions for Review are as follows: *gr*

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[15] Division Docket (CTA Case No. 7596), p. 698.
[16] *Ibid.*, pp. 700-712.
[17] *Ibid.*, pp. 716-727.
[18] *Ibid.*, pp. 758-770.
[19] *Ibid.*, pp. 778-779.
[20] *Ibid.*, p. 787.

CTA EB No. 926

I.

THE HONORABLE FIRST DIVISION ERRED IN HOLDING THAT PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION OF ITS AMENDED DECISION DATED FEBRUARY 15, 2012 WAS NOT THE PROPER REMEDY AND CONSTITUTED A VIOLATION OF SECTION 7 RULE 15 OF THE REVISED RULES OF THE COURT OF TAX APPEALS.

II.

THE HONORABLE SPECIAL FIRST DIVISION ERRED IN DENYING THE INPUT VAT FROM GLIMEX, INC. (EXHIBITS "II-1", "II-2", "JJ" AND "JJ-1") IN THE AMOUNT OF P1,253,750.18 AND RED BALL EXPRESS ANSUICO, INC. IN THE AMOUNT OF P 369,880.16 (EXHIBIT "Y-119"). [21]

CTA EB No. 927

WHETHER OR NOT RESPONDENT IS ENTITLED TO A TAX REFUND EVEN IN THE REDUCED AMOUNT OF P5,945,318.38, ALLEGEDLY REPRESENTING EXCESS/UNUTILIZED INPUT TAX FOR TAXABLE YEAR 2005. [22]

THIS COURT'S RULING

Both petitions are DISMISSED for lack of merit.

CTA EB No. 926

The CTA Special First Division denied MIGP's Motion for Partial Reconsideration of the Amended Decision dated February 15, 2012 on the ground that the Motion for Reconsideration is not the proper remedy to assail the Amended Decision. The Court in Division ruled that it violates the rule on filing of a second motion for reconsideration under Section 7 of Rule 15 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA).

We agree with the ruling of the Court in Division in its Resolution,[23] the pertinent portions of which are quoted as follows:

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[21] *Rollo* (CTA EB No. 926), p. 43.
[22] *Rollo* (CTA EB No. 927), p. 4.
[23] *Rollo* (CTA EB No. 926), pp. 204-205.

On the other hand, in addressing petitioner's "Motion for Partial Reconsideration," the Court considers Section 7 of Rule 15 of the Revised Rules of the Court of Tax Appeals, which clearly states as follows:

> SEC. 7. *No second motion for reconsideration or for new trial.* – No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order.

Likewise, Section 2 of Rule 52 of the Revised Rules of Court provides:

> SEC. 2 *Second motion for reconsideration.* – No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

Based on the records of the case, the Court promulgated a Decision dated October 4, 2010, for which petitioner filed a Motion for New Trial on October 21, 2010. The Court finding merit thereto, accordingly, granted the same, and issued the assailed Amended Decision dated February 15, 2011, pursuant to Section 3 of Rule 14 of the Revised Rules of the Court of Tax Appeals, which expressly provides, to wit:

> RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
> xxx xxx xxx
>
> SEC. 3. *Amended decision.* — Any action modifying or reversing a decision of the Court *en banc* or in Division shall be denominated as Amended Decision.

From the foregoing, the said Amended Decision is the Court's resolution on petitioner's Motion for New Trial, by reversing and setting aside the original Decision.

With this, Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals, states:

> SEC. 3. *Who may appeal; period to file petition.* —
> xxx xxx xxx
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Boldfacing supplied*)

The party adversely affected by the Amended Decision of a Court in Division, being the resolution on the motion for reconsideration or new trial, may file a Petition for Review before the CTA *en banc*. Here, instead of filing a petition before the CTA *en banc*, MIGP filed a Motion for Partial Reconsideration of the Amended Decision on March 8, 2012. The said motion is considered a second motion for reconsideration.

In the case of *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*,[24] the Supreme Court made it clear that a second motion for reconsideration is a prohibited pleading. It is only when there are extraordinarily persuasive reasons, with prior leave of court, that the Supreme Court allows a second motion for reconsideration. It ruled:

> xxx Thus, as a rule, a second motion for reconsideration is a prohibited pleading. The Court stressed in *Ortigas and Company Limited Partnership v. Velasco*:
>
> "**A second motion for reconsideration is forbidden** except for extraordinarily persuasive reasons, and only upon express leave first obtained." (emphasis supplied)
>
> It is true that procedural rules may be relaxed in the interest of substantial justice. They are not, however, to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. They are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial proceedings. Thus, procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudicing a party's substantive rights. Like all rules, they are required to be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of negative consequences commensurate with the degree of thoughtlessness in not complying with the prescribed procedure.

The present case showed no compelling or extraordinarily persuasive reasons to set aside the procedural rules. Furthermore, MIGP did not file a prior leave of court when it filed the second motion for reconsideration. Even assuming this procedural infirmity can be relaxed, the Court in Division was correct in disallowing the input VAT from GLIMEX, Inc. in the amount of P1,253,750.18 and from Red Ball Express Ansuico, Inc. in the amount of P369,880.16 due to reasons discussed below.

Denial of the input VAT from GLIMEX, Inc. in the amount of P1,253,750.18.

Upon re-examination of the records of the case, We cannot give evidentiary value on the photocopied sales invoices (Sales Invoice Nos. 0074 and 0075) attached to its Motion for Partial Reconsideration of the Amended Decision. MIGP failed to satisfy the requirements of the Rules of Court on presentation of secondary evidence. Under the best evidence rule, no evidence shall be admissible other than the original document itself.[25] It is settled that only when the best

[24] G.R. No. 176290, September 21, 2007, 533 SCRA 776.
[25] SEC. 3, Rule 130 of the Rules of Court.

evidence cannot be submitted may secondary evidence be considered. MIGP alleged the loss of the original invoices, hence, it offered the following documents:

(1) Testimony of Ms. Daisy Abenes to prove that the original of the invoices from transactions with Glimex, Inc. can no longer be located in MIGP's records;

(2) Certification issued by Mr. Allan V. Ragasa that the Sales Invoice Nos. 0074 and 0075 were faithful reproduction of the duplicate originals in Glimex Inc.'s possession; and

(3) Photocopies of Sales Invoice Nos. 0074 & 0075 attached to the Certification.

The above documents merely established the existence of the sales invoices, but failed to satisfactorily prove that original invoices were lost in order to warrant the presentation of secondary evidence. In fact, the Certification of Mr. Ragasa confirmed that the duplicate original is in Glimex, Inc.'s possession. MIGP contained itself with the submission of a Certification and photocopies of the invoices instead of presenting the duplicate original.

In the case of *Country Bankers Insurance Corporation vs. Lagman*,[26] the Supreme Court did not consider the secondary evidence, i.e., photocopy of the bond, when respondent Lagman failed to produce the other duplicate originals despite knowledge of the existence and whereabouts of the same. The secondary evidence may not be used without accounting for the other originals. It held:

> A photocopy, being a mere secondary evidence, is not admissible unless it is shown that the original is unavailable. Section 5, Rule 130 of the Rules of Court states:
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> > SEC.5 *When original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.
>
> Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be

[26] G.R. No. 165487, July 13, 2011, 653 SCRA 765 citing *Citibank, N.A. Mastercard v. Teodoro*, 458 Phil. 480, 489 (2003) citing *De Vera v. Aguilar*, G.R. No. 83377, 9 February 1993, 218 SCRA 602, 606.

> attributed. The correct order of proof is as follows: existence, execution, loss, and contents.
>
> In the case at bar, Lagman mentioned during the direct examination that there are actually four (4) duplicate originals of the 1990 Bond: the first is kept by the NFA, the second is with the Loan Officer of the NFA in Tarlac, the third is with Country Bankers and the fourth was in his possession. A party must first present to the court proof of loss or other satisfactory explanation for the non-production of the original instrument. **When more than one original copy exists, it must appear that all of them have been lost, destroyed, or cannot be produced in court before secondary evidence can be given of any one. A photocopy may not be used without accounting for the other originals.** (emphasis ours)

Similarly, in the case of *De Vera vs. Aguilar,*[27] secondary evidence was found inadmissible when petitioners failed to account all the duplicate originals. When the documents consist of duplicates, all of it must be accounted for before using copies. Since all the duplicates or multiplicates are parts of the writing itself to be proved, no excuse for non-production of the writing itself can be regarded as established until it appears that all of its parts are unavailable.[28] The pertinent portion of the ruling provides:

> However, **all duplicates or counterparts must be accounted for before using copies. For, since all the duplicates or multiplicates are parts of the writing itself to be proved, no excuse for non-production of the writing itself can be regarded as established until it appears that all of its parts are unavailable** (*i.e.* lost, retained by the opponent or by a third person or the like).
>
> In the case at bar, Atty. Emiliano Ibasco, Jr., notary public who notarized the document testified that the alleged deed of sale has about four or five original copies. **Hence, all originals must be accounted for before secondary evidence can be given of any one.** This petitioners failed to do. Records show that petitioners merely accounted for three out of four or five original copies. (emphasis ours)

We reiterate at this juncture that claims for tax refund/credit, as in the instant case, are in the nature of claims for exemption. Accordingly, the law relied upon is not only construed in *strictissimi juris* against the taxpayer, but also the proofs presented entitling a taxpayer to an exemption are *strictissimi* scrutinized.[29]

Denial of the input VAT from Red Ball Express Ansuico, Inc. in the amount of P369,880.16. yl

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[27] G.R. No. 83377, February 9, 1993, 218 SCRA 602.
[28] *Ibid.*
[29] *M.E. Holding Corporation vs. Court of Appeals*, G.R. No. 160193, March 3, 2008, 547 SCRA 389.

The Court in Division correctly denied the input VAT claim of P369,880.16 from transaction with Red Ball Express Ansuico, Inc. as it fell short of the invoicing requirements. The official receipt issued to MIGP did not meet the requirements when it merely showed the "TIN number" followed by the letter "V"(TIN 000-073-458 V).

While We agree with MGPI that the applicable provisions on invoicing requirements are Sections 113, 237 and 238 of the National Internal Revenue Code (NIRC) of 1997 prior to Republic Act (RA) 9337, however, the said provisions should be read in relation to Section 4.108-1, Revenue Regulation (RR) No. 7-95 which provides:

> Sec. 4.108-1. Invoicing Requirements. — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration.
>
> In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.
>
> **Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT invoice." All purchases covered by invoices other than a "VAT Invoice" shall not give rise to any input tax.** (emphasis ours)

The above-cited provision clearly requires the printing of TIN followed by the word "VAT" on invoices or receipts. It is not sufficient to print merely the letter "V" instead of the word VAT. In a number of recent cases, the Supreme Court has emphasized the stringent application of the invoicing requirements under the law and its implementing regulations. The non-compliance with the requirements led to the denial of claims for refund. *gr*

In *Bonifacio Water Corporation (formerly Bonifacio Vivendi Water Corporation) vs. The Commissioner of Internal Revenue,*[30] the official receipts issued under the new corporate name of the taxpayer were disallowed on the ground that the use of said business name was without approval of the SEC. In strict adherence to the invoicing requirements under the law and regulations, the Supreme Court ruled as follows:

> xxx the taxpayer, claiming the refund must comply with invoicing and accounting requirements mandated by the Tax Code, as well as the revenue regulations implementing them.
>
> Thus, the change of petitioner's name to "Bonifacio GDE Water Corporation," being unauthorized and without approval of the SEC, and the issuance of official receipts under the name which were presented to support petitioner's claim for tax refund, cannot be used to allow the grant of tax refund or issuance of a tax credit certificate in petitioner's favour. The absence of official receipts issued in its name is tantamount to non-compliance with the substantiation requirements provided by law and, hence, the CTA *en banc*'s partial grant of its refund on that ground should be upheld.

In *Eastern Telecommunications Philippines Inc. vs. Commissioner of Internal Revenue,*[31] the implementing regulations on invoicing requirements, particularly RR No. 7-95 and Revenue Memorandum Circular (RMC) No. 42-2003, were recognized as valid and were given effect as follows:

> **Consequently, the following invoicing requirements enumerated in Section 4.108-1 of Revenue Regulations No. 7-95 must be observed by all VAT-registered taxpayers**: (emphasis ours)
>
> xxx xxx xxx
>
> The need for taxpayers to indicate in their invoices and receipts the fact that they are zero-rated or that its transactions are zero-rated became more apparent upon the integration of the abovequoted provisions of Revenue Regulations No. 7-95 in Section 113 of the NIRC enumerating the invoicing requirements of VAT-registered persons when the tax code was amended by Republic Act (R.A.) No. 9337.
>
> **A consequence of failing to comply with the invoicing requirements is the denial of the claim for tax refund or tax credit, as stated in Revenue Memorandum Circular No. 42-2003**, to wit: (emphasis ours)
>
> A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in

[30] G.R. No. 175142, July 22, 2013.
[31] G.R. No. 168856, August 29, 2012, 679 SCRA 305.

> the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.

In *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*,[32] the Supreme Court ruled that it is crucial for the taxpayer claiming the refund to comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them. Similarly, in *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*,[33] the taxpayer's claim for refund was denied when the invoicing requirements were not complied with, *viz.*:

> The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales. **A "VAT invoice" is an invoice that meets the requirements of Section 4.108-1 of RR 7-95**. Contrary to Microsoft's claim, RR 7-95 expressly states that "[A]ll purchases covered by invoices other than a VAT invoice shall not give rise to any input tax." Microsoft's invoice, lacking the word "zero-rated," is not a "VAT invoice," and thus cannot give rise to any input tax. (emphasis ours)

Meanwhile, MIGP's argument anchored on the case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*[34] (*Intel* case) cannot be sustained. The factual milieu in the *Intel* case is different from that of the instant case. As explained in the case of *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*,[35] the issue in *Intel* case pertained to the BIR authority to print which is not one of the items required by law to be indicated in the receipts, *viz.*:

> To bolster its claim for tax refund or credit, Kepco cites the case of Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue. Kepco's reliance on the said case is misplaced because the factual milieu there is quite different from that of the case at bench. In the Intel case, the claim for tax refund or issuance of a tax credit certificate was denied due to the taxpayer's failure to reflect or indicate in the sales invoices the BIR authority to print. The Court held that the BIR authority to print was not one of the items required by law or BIR regulation to be indicated or reflected in the invoices or receipts, hence, the BIR erred in denying the claim for refund. In the present case, however, the principal ground for the denial was the absence of

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[32] G.R. No. 181136, June 13, 2012, 672 SCRA 350.
[33] G.R. No. 180173, April 6, 2011, 647 SCRA 398.
[34] G.R. No. 166732, April 27, 2007, 522 SCRA 657.
[35] G.R. No. 179961, January 31, 2011, 641 SCRA 70.

> the word "zero-rated" on the invoices, in clear violation of the invoicing requirements under Section 108 (B) (3) of the 1997 NIRC, in conjunction with Section 4.108-1 of R.R. No. 7-95.

After having considered the above-cited laws and jurisprudence, We deny MIGP's petition.

CTA EB No. 927

We need not belabor the issues raised by the CIR regarding VAT registration, invoicing and substantiation requirements as well as MIGP's proof of compliance with the required checklist of requirements on claims for VAT refund. These issues had been passed upon in both the original Decision[36] and Amended Decision.[37]

As regards the issue on prematurity of judicial claims, We apply the recent ruling of the Supreme Court in the consolidated cases of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[38] (*Mindanao II*) citing *Commissioner of Internal Revenue v. San Roque Power Corporation*[39] (*San Roque*). The rules on prescriptive periods involving refund of unutilized input VAT arising from zero-rated sales were summarized as follows:

> ***Summary of Rules on Prescriptive Periods Involving VAT***
>
> We summarize the rules on the determination of **the prescriptive period for filing a tax refund or credit of *unutilized input VAT* as provided in Section 112 of the 1997 Tax Code**, as follows:
>
> (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
>
> (2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.
>
> (3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

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[36] Division Docket (CTA Case No. 7596), pp. 442-466.
[37] *Rollo* (CTA EB No. 926), pp. 6-16.
[38] G.R. Nos. 193301 & 194637, March 11, 2013.
[39] G.R. Nos. 187485, 196113 and 197156, February 12, 2013, 690 SCRA 336.

(4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.[40]

In this case, the relevant dates are provided as follows:

CTA Case No.	Period Covered 2005	Amended Administrative Claim	Judicial Claim	30-day period to file Judicial claim
7596	1st Quarter	03/30/07[41]	03/30/07[42]	07/29/07 to 08/27/07
7648	2nd Quarter	-do-	06/29/07[43]	-do-
7666	3rd Quarter	-do-	08/06/07[44]	-do-
7666	4th Quarter	-do-	08/06/07[45]	-do-

The 120-day period within which the CIR has to render the decision expires on July 28, 2007. Thus, the period to file judicial claims starts from July 29, 2007 to August 27, 2007 as shown above. Consequently, the petitions for first and second quarters, although prematurely filed, fall under the exception to the mandatory and jurisdictional 120-30 day prescriptive period. Applying the *San Roque* and *Mindanao II* ruling to the present controversy, the CTA in Division acquired jurisdiction on the basis of BIR Ruling No. DA-489-03, which according to the High Court, is a general interpretative rule and is regarded as applicable to <u>all taxpayers</u>. Thus, the CTA has jurisdiction over the petitions notwithstanding prematurity of judicial claims on the first and second quarters of 2005. As for the third and fourth quarters, the judicial claim was timely filed.

WHEREFORE, premises considered, the Petitions for Review under CTA EB No. 926 and CTA EB No. 927 are hereby **DISMISSED**. Accordingly, the Amended Decision dated February 15, 2012, and Resolution dated July 26, 2012 promulgated by CTA Special First Division are **AFFIRMED**.

SO ORDERED.

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

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[40] *Ibid.*
[41] MIGP's Offer of Documentary Evidence, Exhibit "R"
[42] Division Docket (CTA Case No. 7596), pp. 4-48.
[43] Division Docket (CTA Case No. 7648), pp. 1-48.
[44] Division Docket (CTA Case No. 7666), pp. 1-52.
[45] *Ibid.*

WE CONCUR:

With Separate Concurring Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MINDANAO I GEOTHERMAL PARTNERSHIP ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 926
(CTA CASE NOS. 7596, 7648, 7666)

x--x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MINDANAO I GEOTHERMAL PARTNERSHIP,
Respondent.

CTA EB NO. 927
(CTA CASE NOS. 7596, 7648, 7666)

Members:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 30 2013 9:05 a.m.

x- -x

CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur in the *ponencia* of my esteemed colleague, the Honorable Associate Justice Juanito C. Castañeda, Jr., dismissing the Petition for Review filed by Mindanao I Geothermal Partnership (MIGP) in CTA EB No. 926 and the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 927.

With regard to the dismissal of the Petition for Review filed by MIGP in CTA EB No. 926, I find it necessary to state that the Motion for Partial Reconsideration filed by MIGP on March 8, 2012 (hereinafter referred to as the *"Second Motion for Reconsideration"*), assailing the Amended Decision of the Court in Division dated February 15, 2012, did not toll the fifteen-day reglementary period to appeal the Amended Decision before the Court *En Banc*.

As discussed in the *ponencia*, the *Second Motion for Reconsideration* filed by MIGP on March 8, 2012 constitutes a violation of Section 7 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), which provides:

> **"RULE 15**
> **MOTION FOR RECONSIDERATION OR NEW TRIAL**
>
> xxx xxx xxx
>
> SEC. 7. No second motion for reconsideration or for new trial. – No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order."

In the case of **Hermenegilda De La Cruz Loyola vs. Anastacio Mendoza,**[1] the Supreme Court emphasized the consequence of the filing of a second motion for reconsideration when its filing is expressly prohibited by the rules, *viz.*:

> "After carefully considering the records of this case, including the submissions of the parties, we find reason to grant the petition not upon a review on the merits, but principally because the appellate court clearly erred in taking cognizance of the appeal over which it had no jurisdiction because the respondent's notice of appeal was patently filed late.
>
> **Section 5, Rule 37 of the Rules of Court is explicit that a second motion for reconsideration shall not be allowed. Its filing in the trial court did not toll the running of respondent's period to appeal** which began to run from January 4, 2001, when respondent received notice of the trial court's Order of November 29, 2000, denying his first motion for reconsideration. Since respondent had only until January 19, 2001 to appeal, his Notice of Appeal, filed on March 12, 2001, or 67 days after receiving notice of the order of denial, should have been denied for being late.

[1] G.R. No. 163340, November 23, 2007.

> **The right to appeal is neither a natural right nor a part of due process. It is merely a purely statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. A party who seeks to avail of the right to appeal must comply with the requirements of the Rules. Perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional. Failure to interpose a timely appeal renders the assailed decision final and executory, and deprives a higher court of jurisdiction to alter the final judgment or to entertain the appeal.** Not even this Court has jurisdiction to review, directly or indirectly, a final and executory decision of the lower court. Clearly, therefore, the Court of Appeals acted without jurisdiction when it took cognizance of respondent's appeal and modified the trial court's final and executory decision."*(Emphases supplied)*

Here, the Amended Decision is the Court in Division's resolution on MIGP's Motion for New Trial. To assail the Amended Decision, instead of filing a Petition for Review before the Court *En Banc* within fifteen (15) days from receipt of the Amended Decision pursuant to Section 3(b) of Rule 8 of the RRCTA, MIGP filed the *Second Motion for Reconsideration*. The filing of the *Second Motion for Reconsideration* is not allowed under Section 7 of Rule 15 of the RRCTA, consequently, its filing did not toll the running of the fifteen-day period for MIGP to appeal the Amended Decision before the Court *En Banc*.

MIGP's fifteen-day period to file a Petition for Review before the Court *En Banc* should be reckoned from February 22, 2012, the date of MIGP's receipt of the Amended Decision, and not from July 31, 2012, the date when MIGP received the Resolution dated July 26, 2012 denying the *Second Motion for Reconsideration*. MIGP should have filed its Petition for Review before the Court *En Banc* **fifteen (15) days from February 22, 2012, or on or before March 8, 2012**. Records show that its Motion for Additional Time to File Petition for Review dated August 15, 2012 was filed with the Court *En Banc* only on **August 15, 2012**. At the time of the filing of MIGP's Motion for Additional Time to File Petition for Review, there was no period to extend as the same had already elapsed. Consequently, MIGP's Petition for Review dated August 30, 2012, which was filed with the Court En Banc on the same date, was filed out of time.

In view of the foregoing, I vote to dismiss the Petition for Review filed by MIGP in CTA EB No. 926 for having been filed out of time and the Petition for Review filed by the CIR in CTA EB No. 927 for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice