REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

# *En Banc*

**GST PHILIPPINES, INC.,**
Petitioner,

**CTA EB CASE NO. 982**
(CTA Case No. 7718)

*- versus -*

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

x--------------------------------------------x

**GST PHILIPPINES, INC.,**
Petitioner,

**CTA EB CASE NO. 1000**
(CTA Case No. 7718)

*- versus -*

Present:
***Del Rosario, P.J.***
***Castañeda, Jr.,***
***Bautista,***
***Uy,***
***Casanova,***
***Fabon-Victorino,***
***Mindaro-Grulla,***
***Cotangco-Manalastas,*** *and*
***Ringpis-Liban, JJ.***

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**Promulgated:**

SEP 25 2014
3:20pm

x--------------------------------------------------------------------------------x

# *D E C I S I O N*

*BAUTISTA, J.:*

## *The Case*

Before the Court *En Banc* are the consolidated Petitions for Review, filed on February 8, 2013, and May 2, 2013, docketed as *CTA EB Case No.*

*982*,[1] and *CTA EB Case No. 1000*,[2] respectively, pursuant to Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals,[3] assailing the following: (a) Resolutions dated November 8, 2012,[4] and January 22, 2013,[5] under the former case; and (b) Resolutions dated January 22, 2013,[6] and March 27, 2013,[7] under the latter case, all rendered by the Former Second Division of the Court ("Court in Division"); and accordingly, praying as follows:

1) To NULLIFY and SET ASIDE the Resolutions dated November 8, 2012, January 22, 2013, and March 27, 2013;

2) To ADMIT the denied documentary evidence in its Formal Offer of Evidence filed on August 10, 2012, in support of its Motion to Amend the Amended Decision dated June 23, 2010 filed on March 22, 2012;

3) To GRANT its Motion to Amend the Amended Decision dated June 23, 2010 filed on March 22, 2012, by directing respondent to refund, in lieu of issuance of a tax credit certificate, the aggregate amount of ₱17,768,881.85; and

4) To ISSUE a Writ of Execution to implement the amendment to the Amended Decision dated June 23, 2010.

## *The Antecedent Facts*

The relevant antecedents as culled from the records of the case:

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[1] *Rollo*, CTA EB Case No. 982 (CTA Case No. 7718), pp. 1-144, with Annexes.
[2] *Rollo*, CTA EB Case No. 1000 (CTA Case No. 7718), pp. 25-86, with Annexes.
[3] RULE 8
PROCEDURE IN CIVIL CASES
xxx xxx xxx
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 the 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.
[4] *Rollo*, CTA EB Case No. 982, pp. 16-18; *Annex "A."* Composed of Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, and Olga Palanca Enriquez (*retired*).
[5] *Ibid.*, pp. 19-26; *Annex "B."* Composed of Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy.
[6] *Rollo*, CTA EB Case No. 1000, pp. 39-46; *Annex "A."* Composed of Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy.
[7] *Ibid.*, pp. 48-51; *Annex "B."*

Petitioner, GST Philippines, Inc., is a corporation duly organized and existing under Philippine laws, with principal office at the 2nd Floor, ALPAP I Building, 140 Leviste Street, Salcedo Village, Makati City. It is a duly registered value-added tax ("VAT") enterprise pursuant to Section 107 of the 1997 National Internal Revenue Code ("NIRC"), as amended, with Tax Identification Number 000-155-645-000.[8]

On the other hand, respondent Commissioner of Internal Revenue is a public officer duly appointed by the President of the Philippines and is the head of the Bureau of Internal Revenue ("BIR"), the government agency officially responsible for the assessment and collection of all national and internal revenue taxes. She is vested with the power and authority to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected.[9]

On September 19, 2006, petitioner filed with the BIR a letter, together with duly accomplished BIR Form No. 1914 (Application for Tax Credits/Refunds), requesting for the refund of the amount of ₱9,660,531.25, representing unutilized input VAT for the period covering October 1, 2005 to June 30, 2006. Likewise, on November 23, 2007, it simultaneously filed with the BIR two (2) letters, with the corresponding duly accomplished BIR Forms No. 1914, asking for the refund of the amounts of ₱7,924,833.14 and ₱606,787.52, representing unutilized input VAT for the periods covering October 1, 2006 to December 31, 2006, and January 1, 2007 to September 30, 2007, respectively.[10]

On January 11, 2008, due to respondent's inaction on its claims in the total amount of ₱18,192,151.91, petitioner filed before the Court sitting in Division, a Petition for Review.[11]

On January 8, 2010, the Court in Division rendered a Decision,[12] ruling as follows:

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[8] *Records*, CTA Case No. 7718, p. 485.
[9] *Id.*, at p. 486.
[10] *Id.*, at pp. 488-489.
[11] *Id.*, at p. 489.

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **NINE MILLION FOUR HUNDRED SEVENTY ONE THOUSAND FOUR HUNDRED SIXTY FIVE PESOS AND 25/100 (₱9,471,465.25)** in favor of petitioner, representing unutilized excess input taxes attributable to zero-rated sales covering the first and second quarters of 2006 and the third quarter of 2007.
>
> **SO ORDERED.**"[13]

Consequently, respondent filed by registered mail her Motion for Reconsideration on February 3, 2010, while petitioner filed a Partial Motion for Reconsideration on February 5, 2010.

Thus, on June 23, 2010, the Court in Division issued an Amended Decision,[14] ruling as follows:

> "**WHEREFORE,** respondent's *Motion for Reconsideration* is hereby **DENIED**. However, petitioner's *Partial Motion for Reconsideration* is hereby **PARTIALLY GRANTED** and this Court's *Decision* promulgated on January 8, 2010 is hereby **MODIFIED,** partially granting the amount of **EIGHT MILLION TWO HUNDRED NINETY SEVEN THOUSAND FOUR HUNDRED SIXTEEN and 60/100 PESOS (₱8,297,416.60)**, in addition to the amount of **NINE MILLION FOUR HUNDRED SEVENTY ONE THOUSAND FOUR HUNDRED SIXTY FIVE and 25/100 PESOS (₱9,471,465.25)** granted in the original *Decision*.
>
> Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the aggregate amount of **SEVENTEEN MILLION SEVEN HUNDRED SIXTY EIGHT THOUSAND EIGHT HUNDRED EIGHTY ONE and 85/100 PESOS (₱17,768,881.85)**, representing unutilized excess input taxes attributable to zero-rated sales, covering the periods of October 1, 2005 to June 30, 2006 and October 1, 2006 to September 30, 2007.

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[12] *Id.*, at pp. 485-505. Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Erlinda P. Uy, and Olga Palanca Enriquez (*retired*), concurring.
[13] *Id.*, at pp. 500-504.
[14] *Id.*, at pp. 528-535.

**SO ORDERED.**"[15]

On July 30, 2010, the Court in Division issued a Resolution,[16] ordering for the issuance of an Entry of Judgment and for the recording of the afore-mentioned Amended Decision into the Book of Entries of Judgments.[17]

On September 3, 2010, petitioner filed a Motion for Execution, praying for the satisfaction of the said Amended Decision dated June 23, 2010. Accordingly, on September 7, 2010, the Court in Division issued a Resolution, granting the Motion for Execution and ordering the issuance of a Writ of Execution.[18]

On March 23, 2012, petitioner filed a Motion to Amend the Amended Decision dated June 23, 2010, stating that as of date, respondent has yet to issue a tax credit certificate in its favor, and that it had already ceased its business operations; thus, taking into consideration Revenue Regulations No. 14-2011,[19] dated July 29, 2011, it prays for the cash refund, in lieu of issuance of a tax credit certificate, of the amount awarded in the Amended Decision, and for the issuance of the corresponding Writ of Execution for its implementation.

On June 26, 2012, the Court in Division issued a Resolution, setting the case for the presentation of petitioner's evidence to support its Motion to Amend the Amended Decision.[20]

On October 2, 2012, the Court in Division ordered petitioner to comply with CTA *En Banc* Resolution No. 04-2008,[21] dated September 2, 2008, before the resolution of its Formal Offer of Evidence (Re: Motion to Amend Amended Decision dated June 23, 2010 dated March 22, 2012).[22]

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[15] *Id.*, at pp. 531-534.
[16] *Id.*, at p. 538.
[17] *Id.*, at p. 540.
[18] *Id.*, at pp. 578-580.
[19] Amending Certain Provision of Revenue Regulations No. 5-2000 as Amended, Prescribing the Regulations Governing the Manner of the Issuance of Tax Credit Certificates, and the Conditions for their Use, Revalidation and Transfer.
[20] *Records*, pp. 618-623.
[21] *Re*: Documents and/or papers filed in Court that need to or need not be affixed with a documentary stamp tax.
[22] *Records*, pp. 835-837.

On November 8, 2012, the Court in Division issued one of the assailed Resolution,[23] ruling as follows:

> "[T]his Court hereby **RESOLVES TO ADMIT** Exhibits '**A**' to '**C**,' '**E**' to '**I**,' '**J-2**,' '**K**,' '**K-1**,' '**L-2**,' '**N**' to '**T**,' and '**U**' to '**Y-1**,' inclusive of submarkings, x x x.
>
> However, this Court **DENIES** the admission of the following exhibits:
>
> 1) Exhibit '**T-1**' for petitioner's failure to submit the same in court; and
> 2) Exhibits '**D**,' '**D-1**,' '**J**,' '**J-1**,' '**L**,' '**L-1**,' '**M**' and '**M-1**,' for petitioner's failure to submit the original copies *(sic)* thereof for comparison.
>
> **WHEREFORE**, x x x. After the filing of the parties' memoranda or the expiration of the period for the filing thereof, petitioner's '*Motion to Amend the Amended Decision dated June 23, 2010*' filed on March 23, 2012 shall be deemed submitted for resolution.
>
> **SO ORDERED**."

Consequently, on November 21, 2012, petitioner filed a Motion for Partial Reconsideration Re: Resolution dated November 8, 2012.

On January 22, 2013, the Court in Division issued another of the assailed Resolution,[24] disposing as follows:

> "**WHEREFORE**, petitioner's *Motion for Partial Reconsideration Re: Resolution dated November 8, 2012* and its *Motion to Amend the Amended Decision* are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

As a result, on February 8, 2013, petitioner filed a Motion for Reconsideration Re: Resolution dated January 22, 2013.

[23] *Supra*, note 4; *Records*, pp. 842-844.
[24] *Supra*, notes 5 and 6; *Records*, pp. 870-877.

On even date, petitioner filed one of the present "Petition for Review," before this Court sitting *En Banc*, docketed as *CTA EB Case No. 982*,[25] assailing the above Resolutions dated November 8, 2012 and January 22, 2013.

And on March 27, 2013, the Court in Division, issued the third assailed Resolution,[26] to quote:

> "**WHEREFORE**, petitioner's *Motion for Reconsideration Re: Resolution dated January 22, 2013* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

Thus, on May 2, 2013, petitioner filed the second "Petition for Review," before the Court *En Banc*, docketed as *CTA EB Case No. 1000*,[27] assailing the mentioned Resolutions dated January 22, 2013 and March 27, 2013.

## *The Issues*

The consolidated Petitions for Review raise the following respective grounds:

*CTA EB Case No. 982*

> "WHETHER THE EXCLUDED EXHIBITS SHOULD BE ADMITTED AS SECONDARY EVIDENCE."[28]

*CTA EB Case No. 1000*

> "WHETHER THE AMENDED DECISION DATED JUNE 23, 2010 SHOULD BE FURTHER AMENDED TO GRANT [PETITIONER] GST THE ₱17,768,881.85 VALUE-ADDED TAX ('VAT') REFUND BY WAY OF CASH INSTEAD OF A T[AX] C[REDIT] C[ERTIFICATE]."[29]

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[25] *Supra*, note 1.
[26] *Supra*, note 7; *Records*, pp. 892-895.
[27] *Supra*, note 2.
[28] *Rollo*, CTA EB Case No. 982 (CTA Case No. 7718), p. 4.
[29] *Rollo*, CTA EB Case No. 1000, (CTA Case No. 7718), pp. 28-29.

## *The Ruling of the Court En Banc*

The consolidated Petitions for Review are bereft of merit.

### *CTA EB Case No. 982*

In one of the assailed Resolution dated November 8, 2012, the Court denied the admission of *Exhibits "D," "D-1," "J," "J-1," "L," "L-1," "M"* and *"M-1,"* for petitioner's failure to submit the original documents for comparison with that of machine copies.[30] In resolving the Motion for Partial Reconsideration Re: Resolution dated November 8, 2012, the Court in another of the assailed Resolution dated January 22, 2013,[31] ruled as follows:

> "x x x. Petitioner submits that it was able to lay the basis for the presentation of the excluded exhibits as secondary evidence pursuant to Rule 130, Section 5 of the Rules of Court.
>
> According to petitioner, during the August 2, 2012 hearing, Ms. Ma. Lina P. Grecia testified that: (a) the original copies *(sic)* of the excluded exhibits were submitted to the relevant government agencies concerned; (b) petitioner prepared only one original copy *(sic)* of each of the excluded exhibits; (c) petitioner tried to secure a copy of the originals of the excluded exhibits but it was unsuccessful; and (d) she is the person in petitioner's office who keeps custody of the excluded exhibits. In view of the foregoing testimony, petitioner is of the belief that it was able to prove circumstances which would render photocopies of the excluded exhibits admissible.
>
> Under the best evidence rule, the original document must be produced whenever its contents are the subject of inquiry. The rule is encapsulated in Section 3, Rule 130 of the Rules of Court, as follows:
>
> xxx xxx xxx
>
> 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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[30] *Supra*, note 4.
[31] *Supra*, notes 5 and 6.

xxx xxx xxx

> 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 attributed. The correct order of proof is as follows: existence, execution, loss, and contents.
>
> In this case, petitioner presented the photocopies of the subject documents and the testimony of Ms. Maria Lina P. Grecia, the treasurer of petitioner, to prove the existence and execution of the subject documents.
>
> However, it must be noted that a party must also present to the court proof of loss or other satisfactory explanation for the non-production of the original instrument. Ms. Grecia's testimony that the government agencies have the original copies *(sic)* of the exhibits subject of the *Motion for Reconsideration* and that they tried to ask the lawyers to get the original copies *(sic)* but not successful is not sufficient to support petitioner's allegation that it was able to lay the basis for the introduction of the excluded exhibits as secondary evidence considering that the said testimony failed to show diligent effort on the part of the petitioner to request and secure from the concerned government agencies, and produce the said originals before the Court. To borrow the words, petitioner failed to prove that the originals had been lost or could not be produced in court after reasonable diligence and good faith in searching for them."[32]

And after consideration, the Court *En Banc* sees no reason to deviate from the findings of the Court in Division, considering that the ground for the denial of the earlier mentioned exhibits has been exhaustively discussed upon in the assailed Resolution.

The Court *En Banc*, thus, fully concurs, and accordingly, sustains the Resolution dated January 22, 2013.

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[32] *Ibid.* Citation omitted.

***CTA EB Case No. 1000***

On the other hand, in the same Resolution dated January 22, 2013,[33] the Court in Division has sufficiently ruled on the denial of petitioner's Motion to Amend the Amended Decision, to quote:

> "According to petitioner, it will not be able to transfer the TCC for valuable consideration in view of RR 14-2011 and considering that it already (*sic*) ceased business operations, it has no more tax liabilities to which the TCC can be offset against. However, th[ese] allegations are contrary to the evidence presented by petitioner which showed that a Formal Letter of Demand with Final Assessment Notices were issued by the respondent assessing it of deficiency income tax, value-added tax and expanded withholding tax for calendar year 2007. Likewise, respondent's representatives issued Letter of Authority for the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes covering the periods from January 1, 2008 to December 31, 2008 and from January 1, 2009 to January 31, 2010 from which assessments may later on be issued. From these alone, it can be concluded that a modification of the Amended Decision is unnecessary considering that the TCCs to be issued by the respondent may still be used to offset petitioner's tax liabilities as assessed in the Formal Letter of Demand with Final Assessment Notices issued by respondent for taxable year 2007, in case it becomes final and executory, and its possible future tax liabilities, in case the examination of the books of accounts and other accounting records of petitioner pursuant to the abovementioned LOAs would result in deficiency tax assessment.
>
> Moreover, perusal of the provisions of EO No. 68 would show that respondent is not absolutely prohibited from issuing TCCs. Section 6 of EO No. 68 is hereunder quoted:
>
> xxx xxx xxx
>
> In this case, petitioner's letter to respondent dated July 10, 2012 entitled 'Tax Credit Certificate Application Request for Update' would show that petitioner was the one who applied for the issuance of TCC. Thus, the provision cited by petitioner would not preclude respondent from issuing the subject TCC.

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[33] *Supra*, notes 5 and 6.

In view of all the foregoing, it is clear that the alleged supervening event, which is the issuance of RR No. 14-2011 and EO No. 68, is not sufficient to cause the modification of the Amended Decision."[34]

Therefore, the Court *En Banc* finds no compelling reason to warrant a reversal or even a modification of the assailed Resolutions.

**WHEREFORE**, the consolidated Petitions for Review are hereby **DENIED** for lack of merit. The Resolutions dated November 8, 2012, January 22, 2013, and March 27, 2013, promulgated by the Former Second Division of the Court are hereby **AFFIRMED** *in toto*.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

***WE CONCUR:***

*(Inhibited)*
**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

[34] *Ibid.* Citations omitted.

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

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

*(Inhibited)*
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

## *C E R T I F I C A T I O N*

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 this Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice