REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

NEW YORK BAY PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 10417**
	Members:
- versus -	**BACORRO-VILLENA**, *Chairperson,* and **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 19 2024 8:02 Am

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RESOLUTION

CUI-DAVID, J.:

Submitted before the Court are the following:

1. petitioner's *Motion for Partial Reconsideration (Re: Decision dated October 4, 2023)* filed on October 24, 2023, with respondent's *Comment and Opposition (Re: Motion for Partial Reconsideration dated 24 October 2023)* filed on November 22, 2023; and,

2. respondent's *Motion for Partial Reconsideration (Re: Decision promulgated on 04 October 2023)* filed on October 27, 2023, with petitioner's *Comment (Re: Motion for Partial Reconsideration dated October 26, 2023)* filed on January 15, 2024.

On October 4, 2023, the Court promulgated a Decision partially granting petitioner's claim for refund of unutilized input value-added tax (VAT) attributable to its zero-rated sales for the four quarters of the calendar year (CY) 2018 in the reduced amount of ₱31,303,243.81 (assailed Decision), the dispositive portion of which states as follows:

> **WHEREFORE**, premises considered, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner New York Bay Philippines, Inc., the amount of **THIRTY-ONE MILLION THREE HUNDRED THREE THOUSAND TWO HUNDRED FORTY-THREE PESOS AND 81/100** (₱31,303,243.81), representing its excess and unutilized input [*sic*]
>
> **SO ORDERED.**

In the above Decision, the Court found that out of petitioner's original claim for a refund of ₱38,046,300.41, only the amount of ₱31,303,243.81 was sufficiently substantiated, the Court disallowed the difference of ₱6,743,056.60 due to the following reasons, *viz.*:

Unreadable Official Receipts (ORs)	₱ 4,136,795.37
Unreadable ORs amount breakdown	1,323,549.64
Nature of Service not indicated/ascertained	221,710.64
Others – VAT amount not indicated and out-of-period invoice	47,510.46
ICPA findings	458,072.92
Failure to refute BIR findings	555,417.47
TOTAL AMOUNT DISALLOWED	**₱6,743,056.60**

Undaunted, both parties filed their respective Motions for Partial Reconsideration, praying that the Court would reconsider the decision.

Petitioner's Motion for Partial Reconsideration

In its Motion, petitioner submits that the Court erred in disallowing the amount of ₱6,743,056.60 in its claim for refund based on the following grounds:

a. while the scanned copies of the unreadable Official Receipts (ORs) may have been blurred or unreadable, the physical copies of the foregoing ORs are, in fact, clear and readable;

b. while the subject ORs did not indicate the nature of services that were covered by petitioner's payment, the subject ORs made reference to the particular billing statements or invoices that were covered by petitioner's payment. Thus, the nature of the services can be ascertained from the related billing statements and invoices issued by the suppliers; and

c. petitioner was able to refute respondent's disallowance of its administrative claim for input VAT refund.

In addition, petitioner attached photocopies of the unreadable ORs in its Motion and further requests, with leave of court, to allow the submission of the physical copies of the said unreadable ORs to enable the Court to appreciate the evidentiary value of the foregoing documents.

On the other hand, in his Comment, respondent reiterates that based on the *VAT Refund Notice* dated September 18, 2020, petitioner's application for refund has been denied for lack of factual and legal basis. He maintains that he correctly denied petitioner's claim for a refund since petitioner failed to substantiate its refund at the administrative level. As such, respondent asserts that petitioner must prove that not only is he entitled under substantive law to his claim for a refund but must also satisfy the documentary and evidentiary requirements under the law that its administrative claim should have been granted in the first place. Simply put, respondent reiterates that a judicial claim for refund with the Court of Tax Appeals (CTA) is an appeal of an unsuccessful administrative claim, wherein the taxpayer has to convince the CTA that the Commissioner of Internal Revenue (CIR) has no reason to deny its claim.

After due consideration, the Court finds petitioner's Motion for Partial Reconsideration bereft of merit.

The Court cannot admit the attached ORs and breakdown of the amount in the ORs in the amounts of ₱4,136,795.37 and ₱1,323,549.64, respectively.[1]

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[1] Exhibits “P-26.3.2”, “P-26.3.3”, “P-26.3.3”, “P-26.3.4”, “P-26.3.4”, “P-26.3.5”, “P-26.3.5”, “P-26.3.6”, “P-26.3.6”, “P-26.3.7”, “P-26.3.7”, “P-26.3.8”, “P-26.3.8”, “P-26.3.9”, “P-26.3.9”, “P-26.3.10”, “P-26.3.10”, “P-26.3.11”, “P-26.3.11”, “P-26.3.12”, “P-26.3.12”, “P-26.3.13”, “P-26.4.4”, “P-26.4.4”, “P-26.4.5”, “P-26.4.5”, “P-26.4.6”, “P-26.4.6”, “P-26.4.7”, “P-26.4.7”, “P-26.4.8”, “P-26.4.8”, “P-26.4.9”, “P-26.4.9”, “P-26.4.10”, “P-26.4.10”, “P-26.4.11”, “P-26.4.11”, “P-26.4.12”, “P-26.4.12”, “P-26.4.13”, “P-26.4.13”, “P-26.4.14”, “P-26.4.14”, “P-26.4.42”, “P-26.4.42”, “P-26.4.43”, “P-26.4.43”, “P-26.4.44”, “P-26.4.44”, “P-26.4.45”, “P-26.4.45”, “P-26.4.46”, “P-26.4.46”. “P-26.4.47”. “P-26.4.47”. “P-26.4.48”. “P-26.4.48”. “P-26.4.49”. “P-26.4.49”, “P-26.4.50”, “P-26.4.50”, “P-26.4.51”, “P-26.4.97”, “P-26.4.97”, “P-26.4.98”, “P-26.4.98”, “P-26.4.99”, “P-26.4.99”, “P-26.4.100”, “P-26.4.100”, “P-26.4.101”, “P-26.4.101”, “P-26.4.102”, “P-26.4.102”, “P-26.4.103”, “P-26.4.103”, “P-26.4.104”, “P-26.4.104”, “P-26.4.105”, “P-26.4.105”, “P-26.4.120”, “P-26.4.121”, “P-26.4.121”, “P-26.4.122”, “P-26.4.122”, “P-26.4.123”, “P-26.4.123”, “P-26.4.124”, “P-26.4.124”, “P-26.4.125”, “P-26.4.125”, “P-26.4.126”, “P-26.4.126”, “P-

As to the first ground, the Court finds no compelling reason to reconsider and admit the ORs attached to petitioner's motion in place of the unreadable ORs and the ORs with an unreadable breakdown of the amount. Albeit Section 8 of Republic Act (RA) No. 1125,[2] as amended by RA No. 9282, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence, the same should still be balanced considering that application of technical rules may be relaxed only in the interest of substantial justice and to benefit the deserving.

In *Republic v. Sandiganbayan et. al.*,[3] the Supreme Court stressed the general rule that evidence may not be given piecemeal. However, when the attendant facts warrant the introduction of further evidence that would qualify a good reason for reopening the case and serve the interest of justice, the Court may allow the reception of additional evidence.

Here, petitioner failed to discharge this burden. Petitioner's motion did not offer any justification for the correction to warrant the subsequent submission of such exhibits after judgment was already rendered. Apparently, petitioner failed to carefully examine and scrutinize all of its supporting evidence before submitting it to the Court during the trial stage. By exercising reasonable diligence, petitioner could have immediately corrected said unreadable exhibits in a timely manner. Absent such explanation, a liberal application of the rules of procedure to suit petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.[4]

Correspondingly, the Court denies petitioner's leave of court to admit the copies of ORs attached to the present Motion and maintains that the amount of ₱5,460,345.01 is disallowed for failure to substantiate.

26.4.127", "P-26.4.127", "P-26.4.128", "P-26.4.128", "P-26.4.129", "P-26.4.129", "P-26.4.130", "P-26.4.130", "P-26.4.131", "P-26.4.131", "P-26.4.132", "P-26.4.132", "P-26.4.133", "P-26.4.133", "P-26.4.134", "P-26.4.135", "P-26.4.136", "P-26.4.136", "P-26.4.137", "P-26.4.137", "P-26.4.138", "P-26.4.138", "P-26.4.139", "P-26.4.139", "P-26.4.140", "P-26.4.140", "P-26.4.141", "P-26.4.141", "P-26.4.142", "P-26.4.142", "P-26.4.143", "P-26.4.143", "P-26.4.144", "P-26.4.144", "P-26.4.145", "P-26.4.145", "P-26.4.146", "P-26.4.146", "P-26.4.147", "P-26.4.147", "P-26.4.148", "P-26.4.148", "P-26.4.149", "P-26.4.149", "P-26.4.150", and "P-26.4.150".

2 "An Act Creating the Court of Tax Appeals", June 16, 1954.

3 G.R. No. 152375, December 13, 2011.

4 *Commissioner of Internal Revenue v. A. Soriano Corporation*, et. al., G.R. No. 113703, January 31, 1997.

The nature of the supplier's service cannot be ascertained/not indicated – ₱221,710.64.[5]

With regard to the second ground, petitioner argues that while the subject ORs did not indicate the nature of services that were covered by petitioner's payment, the subject ORs made reference to the particular billing statements or invoices that were covered by petitioner's payment. Thus, the nature of services can be ascertained from the related billing statements and invoices issued by the supplier.

The Court disagrees.

To reiterate, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the National Internal Revenue Code (NIRC) and the relevant implementing rules and regulations.[6] These requirements should be followed because they are the only way to determine the veracity of the taxpayer's claims.[7] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[8]

Strict compliance with substantiation and invoicing requirements is necessary considering the VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as a tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates the computation of tax credits, and provides an accurate audit trail or evidence for BIR monitoring purposes.[9]

In the assailed Decision, the nature of the services cannot be ascertained in the subject ORs. Though petitioner claims that the related billing statements and invoices indicate the

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5 Exhibits "P-26.1.25", "P-26.1.27", "P-26.1.61", "P-26.1.65", "P-26.1.85", "P-26.1.90", "P-26.1.91", "P-26.1.91", "P-26.1.98", "P-26.1.99", "P-26.2.26", "P-26.2.51", "P-26.2.100", "P-26.2.100", "P-26.2.118", "P-26.3.48", "P-26.3.48", "P-26.3.66", "P-26.3.96", "P-26.3.115", "P-26.3.134", "P-26.3.134", "P-26.3.134", "P-26.3.135", "P-26.4.18", "P-26.4.25", "P-26.4.38", "P-26.4.55", "P-26.4.75", "P-26.4.94", "P-26.4.167", "P-26.4.185", "P-29.1.1", and "P-29.1.1" to "P-29.1.4".

6 *Team Energy Corporation v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

7 *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

8 *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

9 *Team Energy Corporation v. Commissioner of Internal Revenue, et seq., supra.*

nature of the service, petitioner nonetheless failed to attach the said documents to support the subject ORs.

It must be stressed that it is petitioner's responsibility to ensure that all information in the ORs issued by the supplier are clear and complete and to attach the supporting documents so as not to create doubt. Therefore, considering that the nature of the service on the subject ORs could not be ascertained and that no supporting documents were attached thereto, the disallowance must be sustained.

Petitioner was unable to refute the disallowance of its administrative claim for input VAT refund – ₱555,417.47.

Anent the third ground, petitioner argues that it was able to refute respondent's input VAT disallowance in its administrative claim for refund. Petitioner claims that it had already traversed respondent's findings when it submitted its supporting documents in the present case. Petitioner asserts that if respondent's findings were correct, then the unsupported input VAT would have already been reflected in the findings of the Independent Certified Public Accountant (ICPA) in his ICPA Report.

Petitioner's contention is untenable.

To recall, in the letter dated November 6, 2020 issued by the Bureau of Internal Revenue (BIR),[10] denying petitioner's administrative claim in the amount of ₱38,046,300.41, one of the items mentioned was the deductions amounting to ₱555,417.47, which petitioner is now claiming that it was able to refute.

However, as mentioned in the assailed Decision, petitioner failed to offer any evidence to specifically dispute the same.[11] Without any evidence to disprove the BIR's findings, the Court cannot ascertain whether the BIR's findings or disallowance are erroneous. Hence, the disallowance of ₱555,417.47 must be sustained.

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[10] BIR Records, pp. 374-375.

[11] Petitioner's *Formal Offer of Evidence*, Docket, pp. 366-384.

Nonetheless, it bears stressing that the findings of the ICPA do not bind the Court. The ICPA Report is but a tool or guide to aid the Court in the resolution of the case; it is only persuasive in nature and not conclusive upon the Court. The determination of the merits or probative value of such report belongs to the Court, as provided in Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

> SEC. 3. *Findings of independent CPA.* - The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification**. (*Emphasis supplied*)

Verily, the ICPA is commissioned merely to assist the Court in determining the merit of a taxpayer's case. The findings and conclusions of the ICPA shall not be conclusive upon the Court, which is free to either completely or partially adopt or disregard the findings of the ICPA after making its own verification and evaluation of the evidence on record. In other words, the Court will still examine and verify the documents audited or examined by the ICPA – and the Court, in its sound discretion, may render judgment without considering the ICPA report.

Clearly then, petitioner cannot assert that the ICPA's findings are sufficient to validate its claim since the ultimate determination rests upon the Court based on the evidence submitted by the parties. However, this is not to say that the Court disregarded the ICPA Report. Certainly, the ICPA findings on petitioner's effectively zero-rated sales *vis-à-vis* the pertinent pieces of evidence presented to support the said sales were duly taken into consideration and were thoroughly examined by the Court in arriving at the conclusions made in the assailed Decision.

Time and again, it has been emphasized that actions for tax refunds are in the nature of a claim for exemption, and the law is construed in *strictissimi* juris against the taxpayer-claimant. The pieces of evidence presented entitling it to an exemption are also *strictissimi* scrutinized and must be duly proven.[12] Thus, considering that petitioner still failed to validly refute the BIR's findings, the disallowed amount of ₱555,417.47 is maintained.

That having been settled, the Court shall now discuss the merit of respondent's Motion.

Respondent's Motion for Partial Reconsideration

In his motion, respondent argues that the Court erred on the following points in the assailed Decision, to wit:

a. in ruling that it can give weight to evidence not presented during the investigation done in the administrative level;

b. in ruling that petitioner has valid zero-rated sales; and,

c. in concluding that the claimed input VAT remained unutilized and were not carried over to succeeding periods.

Citing the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,*[13] respondent states that a distinction must be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. Respondent continues that since he has already rendered a decision in the administrative proceedings, the jurisdiction of the Court has shifted from a trial court to an appellate tribunal. The Court should, therefore, confine itself to whether the findings of respondent are consistent with the law and that the Court cannot consider or give weight to evidence not presented during the administrative proceedings.

Respondent also posits that the only document submitted by petitioner to prove that it has valid zero-rated sales from its lone service-recipient, Tran-Fast Remittance LLC, were the Articles of Incorporation and SEC Certification of Non-Registration of Company. Such documents only prove that said lone service-recipient is a non-resident foreign corporation but

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[12] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.
[13] G.R. No. 207112, December 8, 2015.

do not itself prove that it is not engaged in any trade or business in the country.

Lastly, respondent points out that the VAT Return evaluated by the Court only pertains to the 1st quarter of CY 2019. Respondent argues that petitioner failed to overcome the burden that the subject input tax being claimed remained unutilized or has not been applied against any output tax for the current and succeeding quarters following the 1st quarter of the calendar year 2019.

On the other hand, in its Comment, petitioner contends that there is no basis for respondent's allegation that the Court gave weight to evidence not presented during the administrative level, as respondent failed to identify what particular documents were considered by the Court which were not presented during the administrative phase. Petitioner also claims that scrutiny of the Decision will show that the Court did not consider any document not presented during the administrative proceedings, such as Billing Statements or Statement of Accounts supporting petitioner's zero-rated ORs.

Petitioner likewise insists that it was able to prove that its clients for the subject sales were non-resident foreign corporations doing business outside the Philippines. It continues that by presenting Trans-Fast's Articles of Incorporation/ Certificate of Non-Registration, petitioner has duly proven that Trans-Fast is a non-resident foreign corporation doing business outside the Philippines. Petitioner further points out that the burden of proving otherwise rests with the respondent. However, a perusal of the records of this case will show that respondent did not submit any evidence that would prove that Trans-Fast is engaged in any trade or business in the Philippines.

Furthermore, petitioner stresses that its witness, Ms. Marivic Cruz, testified on the deduction of the amount of ₱38,046,300.31 from the input tax inventory during the 1st quarter of CY 2019, as shown in its Amended Quarterly VAT Return for the 1st quarter of 2019. Moreover, the Court likewise confirmed that, although petitioner carried over the claimed input VAT amount of ₱38,046,300.41 in the succeeding quarter/period, the same remained unutilized until it was deducted as "VAT Refund/TCC claimed" in petitioner's Quarterly VAT Return for the 1st Quarter of CY 2019. Petitioner concludes that from the foregoing, it has already been proven

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by sufficient evidence that the subject input tax being claimed remained unutilized or has not been applied against any output tax for the current and succeeding quarters following the 1st quarter of calendar year 2019.

After due consideration, the Court likewise finds respondent's motion bereft of merit.

While the arguments raised by respondent were previously raised in his pleadings that have already been addressed and discussed in the assailed Decision, the Court finds it essential to reiterate the issue on the appellate jurisdiction of the Court following a taxpayer's unsuccessful administrative claim for refund or tax credit.

The CTA is not precluded from considering evidence not presented in the administrative claim with the BIR.

The role of this Court is not only confined to determining whether the Commissioner's denial of the subject claim at the administrative level is proper. In the recent case of *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.),*[14] the Supreme Court categorically stated that the CTA is not precluded from considering evidence that was not presented in the administrative claim with the BIR.

The Articles of Incorporation and SEC Certification of Non-Registration of Company of a foreign corporation are sufficient to prove that it is not engaged in any trade or business in the Philippines.

For zero-rated sales on services, to prove that the foreign corporation is doing business outside the Philippines or is a nonresident person not engaged in business who is outside the Philippines when the services were performed, the presentation of the Articles of Incorporation and SEC Certification of Non-Registration is sufficient.

[14] G.R. No. 231581, April 10, 2019.

Since petitioner was able to present Trans-Fast Remittance LLC's Article of Incorporation *and* its SEC Certificate of Non-Registration, the said documents are sufficient to establish that said foreign corporation is doing business outside the Philippines.

The input VAT remained unutilized and were not carried over the succeeding periods.

Section 110(C) of the NIRC of 1997, as amended, merely requires that the amount of input VAT claimed for refund should be deducted from the accumulated input VAT as of the month or quarter when such claim was opted to be filed. The reason for the deduction is to ensure that the claimed input VAT shall not be applied against any future output VAT liability.

As discussed in the assailed Decision, the claimed input VAT amount of ₱38,046,300.41 was carried over by petitioner in the succeeding quarter/period, the same remained unutilized until it was deducted as "VAT Refund/TCC claimed"[15] in its Quarterly VAT Return for the 1st quarter of CY 2019. Accordingly, the subject claim no longer forms part of the excess input VAT of ₱7,332,025.74[16] as of the end of the 1st quarter of CY 2019. Such being the case, the claimed input VAT could not have been carried over or utilized in the succeeding quarters of CY 2019. Verily, petitioner complied with the ninth requisite for the grant of the input VAT claimed for refund or issuance of TCC.[17]

Given the foregoing disquisitions, the Court finds no compelling reason to reverse, amend, or modify the assailed Decision promulgated on October 4, 2023.

WHEREFORE, premises considered, petitioner's *Motion for Partial Reconsideration (Re: Decision dated October 4, 2023)* and respondent's *Motion for Partial Reconsideration (Re: Decision promulgated on 04 October 2023)* are both **DENIED** for lack of merit.

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[15] Exhibit "P-12", Line 23D, Docket, p. 425.
[16] Exhibit "P-12", Line 29, Docket, p. 425.
[17] Decision, p. 37, Docket (Vol. II).

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SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I Concur:

(With Separate Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

NEW YORK BAY PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10417**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
APR 19 2024 8:02 AM

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SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Lanee S. Cui-David, denying petitioner New York Bay Philippines, Inc.'s Motion for Partial Reconsideration for lack of merit. However, for respondent Commissioner of Internal Revenue's Motion for Partial Reconsideration, I vote to deny the same for being filed out of time.

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals[1] (**RRCTA**) provides that any aggrieved party may file his or her motion for reconsideration or new trial within fifteen (15) days from receipt of the court's assailed decision, resolution, or order.

Reiterating the cases of *National Power Corp. v. National Labor Relations Commission, et al.*[2] (**NAPOCOR**) and *Commissioner of Customs v. Court of Tax Appeals*[3] (**COC v. CTA**), in the recent case of *Claudine Monette Baldovino-Torres v. Jasper A. Torres*[4] (**Torres**), the Supreme Court clarified

[1] A.M. No. 05-11-07-CTA.
[2] G.R. Nos. 90933-61, 29 May 1997.
[3] G.R. No. 132929, 27 March 2000.
[4] G.R. No. 248675, 20 July 2022.

that the reckoning point of the 15-day reglementary period to file a reconsideration or new trial is counted from the receipt of the Office of the Solicitor General (**OSG**), the latter being the representative of the government of the Philippines, its agencies and instrumentalities:

> ...
>
> In the case of *National Power Corporation v. National Labor Relations Commission* (NAPOCOR), the Court held that **the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG**. In holding so, the **Court emphasized that the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer. As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter**.
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> The NAPOCOR case was cited in the subsequent case of *Commissioner of Customs v. Court of Tax Appeals*, where it was reiterated that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive**.
>
> In the same vein, **the period to file a motion for reconsideration in the present case should be counted from the receipt by the OSG of a copy of the RTC Decision on April 4, 2017**. Consequently, the filing by the OSG of its Motion for Reconsideration questioning the RTC Decision on April 18, 2017 was well within the reglementary period for filing such motion. **The counting of the period for its filing should be reckoned from the date of receipt of the assailed decision by the OSG and not by the public prosecutor**. This is because the public prosecutor acted as a mere representative of the OSG which, in turn, retained supervision and control over the former.[5]
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> ...

Applying *NAPOCOR, COC v. CTA* and *Torres*, a perusal of the case records reveals that OSG received the Decision of 04 October 2023 on **11 October 2023**.[6] Counting 15 days therefrom, respondent had until **26 October 2023** to file his or her Motion for Partial Reconsideration. However, the same was only filed on 27 October 2023. Thus, it was belatedly filed.

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[5] Citations omitted, emphasis supplied and italics in the original text.

[6] See Notice of Decision.

With the foregoing, I vote to **DENY** respondent's Motion for Partial Reconsideration for being filed out of time.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice