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

*Third Division*

**TOLEDO POWER CO.,**
*Petitioner,*

- *versus* -

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 8671**

Members:
**BAUTISTA**, *Chairperson,*
**FABON-VICTORINO**, *and*
**RINGPIS-LIBAN**, *JJ.*

Promulgated:
JAN 12 2018
2:30 p.m.

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# *RESOLUTION*

*BAUTISTA, J:*

For resolution are the following incidents:

1. Petitioner's Motion for Partial Reconsideration (with Motion to Reopen Proceedings) filed on October 12, 2017 with respondent's Opposition (Re: Motion for Partial Reconsideration with Motion to Reopen Proceedings) filed on November 27, 2017; and

2. Respondent's Motion for Partial Reconsideration (Re: Amended Decision promulgated 25 September 2017) filed on October 18, 2017 with petitioner's Comment (To Respondent's Motion for Partial Reconsideration dated October 18, 2017) filed on November 27, 2017.

On June 28, 2017, the Court promulgated a Decision denying the Petition for Review for lack of merit. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of merit.

**SO ORDERED.**

Thereafter, petitioner moved for the reconsideration of the Decision.

On September 25, 2017, the Court promulgated an Amended Decision partially granting petitioner's claim for refund of unutilized input value-added tax ("VAT"). The dispositive portion of the Amended Decision reads:

> **WHEREFORE**, premises considered, petitioner's Motion to Reopen Proceedings is hereby **DENIED** for lack of merit, while its Motion for Reconsideration is hereby **PARTIALLY GRANTED**.
>
> Accordingly, the Decision promulgated on June 28, 2017 is **REVERSED** and **SET ASIDE**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund in favor of petitioner Toledo Power Co. the amount of **Six Million Two Hundred Forty-One Thousand Nine Hundred Sixty-Six Pesos and 20/100 (Php6,241,966.20)**, representing petitioner's unutilized input value-added tax arising from its zero-rated sales/receipts for the fourth quarter of calendar year 2011.
>
> **SO ORDERED.**

Aggrieved, both parties filed their respective Motions for Partial Reconsideration of the Amended Decision.

In petitioner's Motion for Partial Reconsideration, petitioner avers that there was a mistake on the representation of the independent Certified Public Accountant ("ICPA") that all the necessary documents had been photocopied and submitted to the Honorable Court, and that the attached Settlement of Duties and Taxes ("SSDTs") were recently issued by the Bureau of Customs ("BOC") and could not have been presented before the Court.

In response to petitioner's Motion for Partial Reconsideration, respondent counters that the motion to reopen proceedings should be denied as petitioner had already been given more than ample opportunity to properly ventilate its claim, and that the Court correctly denied petitioner's claim for refund.

On the other hand, in respondent's Motion for Partial Reconsideration, respondent argues that the Court erred in ruling that the Court shall allocate the valid input value-added tax ("VAT") proportionately on the basis of the volume of its sales since petitioner's input VAT cannot be directly or entirely attributed to any of the transactions.

Meanwhile, in response to respondent's Motion for Partial Reconsideration, petitioner counters that *Section 112(A) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*[1] is clear in its wording and that there is no room for interpretation other than the application of the clear wording of the law, and that the Court has duly examined the pieces of evidence submitted by petitioner.

After a careful review of the grounds raised in the respective Motions for Partial Reconsideration as well as the counter-arguments raised in the Opposition and Comment, respectively, the Court finds that the parties failed to raise a new or substantial matter, or a compelling reason to justify the reversal or modification of the Court's findings in the Amended Decision. Nevertheless, the Court will expound on the arguments raised by the parties to reinforce the discussion in the Amended Decision.

Petitioner argues that petitioner mistakenly relied on the ICPA's representation that all the documents submitted to the Court were complete.

*Section 2, Rule 13 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[2] provides, among others, that it is the ICPA's duty to examine and verify receipts, reproduce and pre-mark exhibits, and make findings as to compliance of the evidence with tax laws.

In the present case, petitioner cannot be faulted for relying on the ICPA's representation as to the completeness of the evidence the ICPA submitted to the Court. However, as the Court noted in the Amended Decision, petitioner has already been given several opportunities to

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[1] *Republic Act No. 8424*, as amended (1997).
[2] A.M. No. 05-11-07-CTA (2005).

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support its claim for refund. Litigation must end at some point. As held by the Supreme Court in *Ortigas and Company Limited Partnership v. Velasco*[3],

> For all litigation must come to an end at some point, in accordance with established rules of procedure and jurisprudence. As a matter of practice and policy, courts must dispose of every case as promptly as possible; and in fulfillment of their role in the administration of justice, they should brook no delay in the termination of cases by stratagems or maneuverings of parties or their lawyers. . .[4]

Accordingly, the Court holds that there is no merit to petitioner's motion to reopen proceedings as petitioner has already been granted ample opportunity to present its case. Petitioner's strategy of filing the motion after several months have passed from the time the Court issued the resolution submitting the case for decision is a dilatory tactic that should not be countenanced.

Similarly, the Court holds that the presentation of the SSDTs has no merit as the SSDTs would merely prove a fact that petitioner has already sought to establish by the presentation of other pieces of evidence (*i.e.*, Import Entry and Internal Revenue Declaration), which evidence has already been examined by the Court in the Amended Decision.

Finally, the Court affirms its finding in the Amended Decision that the allocation of petitioner's valid input VAT is proper as *Section 112(A) of the 1997 NIRC* clearly provides that the proportional allocation of valid input VAT is warranted if the taxpayer is engaged in both sales subject to 12% VAT and 0% VAT, as well as sales to government and exempt sales.

**WHEREFORE**, premises considered, petitioner's Motion for Partial Reconsideration (with Motion to Reopen Proceedings) and respondent's Motion for Partial Reconsideration (Re: Amended Decision promulgated 25 September 2017) are hereby **DENIED** for lack of merit. The Amended Decision promulgated on September 25, 2017 is **AFFIRMED**.

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[3] G.R. Nos. 109645 & 112564, March 4, 1996, 254 SCA 234.
[4] Underscoring ours.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

**WE CONCUR:**

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

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice