REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KEPCO ILIJAN CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 988
(C.T.A. Case No.8091)

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

Promulgated:
JUL 10 2014 9:00 a.m.

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DECISION

Fabon-Victorino, J.:

This Petition for Review [1] seeks to reverse the Resolution [2] dated February 15, 2013 which denied the Motion for Reconsideration filed by petitioner KEPCO ILIJAN CORPORATION thereby affirming the Decision[3] of the Court in Division promulgated on October 23, 2013. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**, and accordingly **DISMISSED** for

[1]*En Banc* docket, pp. 1-15.
[2]*Id.*, pp. 19-23.
[3]*Id.*, pp. 24-41.

lack of merit. Accordingly, petitioner Kepco Ilijan Corporation is hereby **ORDERED TO PAY** respondent Commissioner of Internal Revenue the aggregate amount of **SEVENTY SEVEN MILLION TWO HUNDRED EIGHTY SEVEN THOUSAND FIVE HUNDRED NINETY THREE and 14/100 PESOS (P77,287,593.14)**, representing deficiency VAT and Final Withholding Taxes for the taxable year 2006, inclusive of the 25% surcharge imposed under *Section 248 (A) (3) of the NIRC of 1997, as amended*, computed, as follows:

	Basic	25% Surcharge	Total
VAT	P29,237,720.89	P7,309,430.22	P36,547,151.11
FWT	32,592,353.62	8,148,088.41	40,740,442.03
Total	P61,830,074.51	P15,457,518.63	P77,287,593.14

In addition, petitioner is ordered to pay:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of P29,237,720.89 computed from January 25, 2007 and on the basic deficiency FWT of P32,592,353.62 computed from January 15, 2007, until full payment thereof, pursuant to *Section 249 (B) of the NIRC of 1997, as amended*; and

(b) delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency taxes of P77,287,593.14 and on the 20% deficiency interest which has accrued, as aforestated in paragraph (a) hereof, computed from August 15, 2009 until full payment thereof, pursuant to *Section 249 (C) of the NIRC of 1997, as amended*.

SO ORDERED.

The facts as established during the trial are as follows:

Petitioner is a domestic corporation with business address at 18th Floor Citibank Tower, 8741 Paseo de Roxas, Salcedo Village, Makati City.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) with authority to decide, approve and grant tax protests. She holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

On August 25, 2009, petitioner received a Formal Letter of Demand [4] (FLD) issued by respondent to pay deficiency value-added tax (VAT) and final withholding tax (FWT) for taxable year 2006 in the total amount of ₱93,557,711.63, inclusive of penalties and surcharges.

On September 23, 2009, petitioner filed a letter-protest[5] contesting the said FLD.

On April 21, 2010, petitioner filed a Petition for Review [6] with the Court in Division alleging respondent's inaction on its protest.

In her Answer [7] filed on May 31, 2010, respondent basically alleged that: (1) the audit and investigation disclosed that petitioner declared in its 4th quarter VAT return zero-rated sales amounting to ₱242,947,485.67 but failed to explain the nature of such receipts, *ergo*, subject to 12% VAT; (2)petitioner failed to treat receipts amounting to ₱700,188.39 as subject to VAT as it is a miscellaneous income from the penalties it imposed to suppliers for late deliveries of goods and from accommodation of visitors on its dormitory which are incidental to its business; (3) petitioner is liable for deficiency VAT in the amount of ₱29,237,720.89 by virtue of Section 108 of the NIRC of 1997, as amended; (4) petitioner is liable for deficiency FWT in the amount of ₱32,592,353.62 for not subjecting to final withholding tax various payments to non-resident corporations amounting to ₱101,851,105.07; (5) the

[4]Exhibit "A", *rollo*, pp. 543-544.
[5]Exhibit "B", *rollo*, pp. 547-551.
[6]*Rollo*, pp. 1-13.
[7]*Rollo*, pp. 137-145.

documents presented by petitioner are not sufficient to cancel the assessment; and (6) tax assessments enjoy the presumption of correctness and made in good faith and that petitioner has the burden to prove otherwise.

During the trial, petitioner presented Jane T. Pagkalinawan and Godofredo D. Saises, as its witnesses while respondent had Revenue Officers Ma. Theresa V. Carrilo and Teresita B. Villamor as witnesses.

On October 23, 2012, the Court in Division denied the Petition for Review, for lack of merit. Petitioner was directed to pay respondent the aggregate amount of SEVENTY SEVEN MILLION TWO HUNDRED EIGHTY SEVEN THOUSAND FIVE HUNDRED NINETY THREE and 14/100 PESOS (₱77,287,593.14), representing deficiency VAT and Final Withholding Taxes for taxable year 2006, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC, as amended. It was also ordered to pay deficiency and delinquency interests.

Aggrieved, petitioner filed a Motion for Reconsideration[8] on November 23, 2012, which the Court in Division denied for lack of merit in the assailed Resolution of February 15, 2013.

Hence, this Petition for Review with the following issues for the resolution of the Court *En Banc,* viz.:

A. Whether petitioner is liable to pay the assessed VAT with respect to the sales adjustment related to the sale of its electricity to the National Power Corporation (NPC) covering the period December 25, 2003 to October 31, 2005 reflected in its 4th quarter return for the taxable year 2006 and alleged miscellaneous income.

B. Whether the payments made to a non-resident foreign corporation, pending the result of the tax treaty

[8]*Rollo*, pp. 991-1000.

application filed by the petitioner before the BIR – International Tax Affairs, are taxable.

Petitioner contends that the denial of its Motion for Reconsideration effectively sustaining the Decision of October 23, 2013 is anchored on its alleged non-compliance with the submission of information return or inventory requirement provided under the transitory provision of Revenue Regulations (RR) No. 16-2005 which implements Republic Act (RA) No. 9337 or the E-VAT Law that took effect on November 1, 2005. But according to petitioner, the transitory provision of RR No. 16-2005 is not applicable under the obtaining circumstances for the following reasons:

> (1) The concept of generation rate or foreign currency adjustments was never mentioned nor contemplated in RA No. 9337. It was recognized under ERC Resolution No. 20 Series of 2005 and RMC No. 61-2005 dated October 27, 2005 only for the power generation sector. Thus, if generation rate adjustments billed and collected after October 31, 2005 were considered subject to the inventory requirement under RA No. 9337, and its IRR, then respondent would not have issued RMC No. 61-2005 which provides that generation rate adjustments on electricity sold on or before October 31, 2005 shall still be VAT zero-rated regardless of when these were billed or collected;
>
> (2) The transitory provision applies only to transactions which, prior to the effectivity of RA No. 9337, were tax exempt and not zero-rated; and
>
> (3) The ERC and respondent, in issuing the guidelines related to the VAT treatment specific to the power generation sector as they apply to the generation and foreign rate adjustments, clearly intended to maintain the VAT zero-rated

classification of sale of electricity and any adjustments related thereto.

Petitioner further argues that the imposition of VAT on its miscellaneous income derived from penalties for late deliveries by certain contractors and accommodation of visitors on its dormitory are not subject to VAT on the ground that they were earned from transactions not connected with its primary business purpose of generating and selling electricity.

Petitioner likewise finds erroneous the ruling of the Court in Division that petitioner is liable for deficiency tax related to its payment to a non-resident foreign corporation notwithstanding recognition that petitioner has a pending application with the BIR-International Tax Affairs Division (ITAD) to avail the benefits under the RP-Korea Tax Treaty. Petitioner argues that under the principle of primary jurisdiction, the Court should have deferred the determination on matter as the pre-emptory act of holding it liable for deficiency tax without giving the BIR-ITAD the opportunity to determine the merits of its pending tax treaty application does not give comport to the stability of the application of our tax laws and treaties. Besides, it should not be unduly prejudiced by the delay on the part of respondent in determining the merits of its tax treaty relief application.

In her Comment,[9] respondent maintains that under the transitory provision of RR No. 16-2005, implementing RA No. 9337, petitioner is required to submit inventory or information return to the Revenue District Office (RDO) concerned within thirty (30) days after the effectivity of RA No. 9337 in order that its sales adjustments covering the period prior to the effectivity of RA No. 9337 on November 1, 2005 be exempted from VAT. However, petitioner failed to fulfill this condition, thus the automatic imposition of VAT on its sales adjustments relative to its sales of generated electricity to NPC for the period December 25, 2003 to October 21, 2005.

[9]*En Banc* docket, pp. 51-63.

Respondent also puts premium on petitioner's admission that the amount of ₱700,188.39 is a miscellaneous income acquired in connection with its business transactions, albeit not directly connected with its sale of electricity. Being incidental transactions in the pursuit of petitioner's business, such miscellaneous income is subject to VAT, says respondent.

Finally, respondent insists that the income payments made by petitioner to KEPCO, a non-resident foreign corporation, pursuant to the Management and Technical Services Agreement (MTSA), is subject to FWT since at the time of such payment, petitioner's application to avail the benefits under the RP-Korea Tax Treaty was still pending. According to respondent, to avail of the benefit under the tax treaty, petitioner must first comply with the requirements of Revenue Memorandum Order (RMO) No. 01-2000 dated November 25, 1999. Petitioner cannot automatically exempt itself from the payment of withholding taxes without observing the provisions under RMO No. 01-2000.

RULING OF THE COURT *EN BANC*

The instant petition is partly meritorious.

The sales adjustments in the amount of ₱242,947,485.67 related to the sale of electricity to NPC for the period December 25, 2003 to October 31, 2005 reflected in petitioner's 4th quarter VAT return for taxable year 2006 is subject to 12% VAT.

Respondent assessed petitioner of deficiency VAT for taxable year 2006 on the latter's alleged non-compliance with RR No. 16-2005, implementing RA No. 9337, which states:

TRANSITORY AND OTHER PROVISIONS

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(c) *Billed but uncollected sale of services.* - Amounts due on sale of services becoming liable to VAT under RA No. 9337 rendered before the *effectivity of RA No. 9337*, payments of which are received on or after *the effectivity of RA No. 9337*, shall be considered as accrued as of *the day immediately preceding the effectivity of RA No. 9337* for the purpose of VAT exemption and payment of any applicable percentage tax, if any, or VAT exemption as the case may be, subject to the following conditions:

(i) Information return to be filed on or before *sixty (60) days from the effectivity of RA No. 9337* showing the name(s) of the contractor(s), client(s), customer(s) and the amount(s) of the contract price outstanding as of *the day immediately preceding the effectivity of RA No. 9337*, and containing a declaration of the obligation to pay the applicable percentage tax due if any;

(ii) The seller billed the amount before *the effectivity of RA No. 9337*, and a copy of such billing is attached to the information return required in (i) hereof;

(iii) The seller has recorded in his books of accounts as of *the day immediately preceding the effectivity of RA No. 9337* the amount receivable; and

(iv) The seller files on or before the 20th day after each month, the regular percentage tax return for the payment of the percentage tax on payments received *after the effectivity of RA No. 9337*.

In the case of sale of electricity, if a billing period covers power consumption for the period before *and* after *the effectivity of RA No. 9337*, 10% VAT shall be applied only to electricity consumption for the

> period on or after *the effectivity of RA No. 9337*. The electricity consumption before the effectivity of RA No. 9337 shall not be subject to 10% VAT but to the applicable franchise/percentage tax.
>
> **Failure to comply with the above-stated conditions shall automatically subject the gross receipts to the VAT.** *(Emphasis supplied)*

According to respondent, since petitioner failed to submit the required inventory or information return to the RDO concerned within thirty (30) days after the effectivity of RA No. 9337 as explicitly required under the law, the assessment for deficiency VAT on the sales adjustments relative to its sales of generated electricity to NPC for the period December 25, 2003 to October 31, 2005 was validly issued.

On the matter, petitioner explains that the amount of ₱242,947,485.67 declared in its 4th quarter VAT return is related to tariff revenue adjustments paid by NPC from December 25, 2003 until October 31, 2005, which had been billed and collected prior to the effectivity of RA No. 9337. That being the case, the transitory provision provided under the law and its IRR is not applicable. Further, these adjustments pertain to the United States Producers Price Index and Philippine Consumer Price Index adjustment factors allowed under the Energy Conversion Agreement (ECA) between petitioner and NPC.[10]

The Court is not convinced.

It is true that Revenue Memorandum Circular (RMC) No. 61-05 and Energy Regulatory Commission (ERC) Resolution No. 20-05, recognize that generation rate and foreign exchange rate adjustments to electricity sold on or before October 31, 2005, although billed and collected thereafter, are considered VAT zero-rated, to wit:

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[10]See note 3, *supra*, pp. 29-30.

RMC No. 61-05:[11]

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Q30 – What will be the treatment of generation rate and foreign exchange rate adjustments to electricity sold on or before October 31, 2005?

A30 – **Generation rate and foreign exchange rate adjustments to electricity sold on or before October 31, 2005, although billed and collected thereafter, shall be considered as VAT zero-rated**. (*Boldfacing supplied*)

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ERC Resolution No. 20, series of 2005:[12]

I. GENERAL PRINCIPLES

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(i) **Generation rate and foreign exchange rate adjustments to electricity sold on or before October 31, 2005, although billed and collected thereafter, shall be considered as VAT zero-rated**. (*Boldfacing supplied*)

However, let it be emphasized that there is nothing in RMC No. 61-05 and ERC Resolution No. 20, series of 2005 which exempts petitioner from complying with the *Transitory and Other Provisions* of RR No. 16-2005, which specifies the requirements to be complied with in order for sale of services (becoming liable to VAT under RA No. 9337) rendered before the effectivity of RA No. 9337 to remain exempt from VAT.

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[11] Clarifying the VAT Provisions of R.A. 9337 Applicable to the Power Industry
[12] Implementing the Recovery of Value Added Tax (VAT) and other Provisions of Republic Act No. 9337 Affecting the Electric Power Industry

It bears stressing that rules and regulations issued by administrative or executive officers pursuant to the procedure or authority conferred by law upon administrative agency have the force and effect, or partake of the nature, of a statute. The reason is that statutes express the policies, purposes, objectives, remedies and sanctions intended by the legislature in general terms. The details and manner of carrying them out are oftentimes left to the administrative agency entrusted with their enforcement. It is the Finance Secretary who promulgates the revenue regulations, upon recommendation of the BIR Commissioner. These regulations are the consequences of a delegated power to issue legal provisions that have the effect of law.[13]

RMC No. 61-05 was issued by the CIR *"to publish and clarify certain provisions of RR No. 14-2005 as amended by RR No. 16-2005, implementing the National Internal Revenue Code (NIRC) of 1997, as amended by RA No. 9337, affecting generation, transmission, and distribution companies as well as electric cooperatives as defined in RA No. 9136 (EPIRA) subject to the VAT as well as their suppliers and customers effective November 1, 2005."* In issuing RMC No. 61-05, the CIR did not modify or repeal RR No. 16-2005. Instead, RMC No. 61-05 must be read in conjunction with RR no. 16-2005.

Considering that petitioner failed to comply with the conditions prescribed under paragraph c(i) of the Transitory and Other Provisions of RR No. 16-2005, its gross receipts amounting to ₱242,947,485.67, representing the generation rate adjustments which petitioner necessarily derived from its sale of electricity for the period December 25, 2003 to October 31, 2005, is subject to 12% VAT.

The miscellaneous income amounting to ₱700,188.39 is subject to 12% VAT.

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[13] *Commissioner of Internal Revenue vs. Solidbank Corporation*, G.R. No. 148191, November 25, 2003.

Petitioner insists that the miscellaneous income amounting to ₱700,188.39 is not subject to VAT claiming that such payments do not come within the ambit of its primary operation, viz., to generate and sell electricity, to be considered as having been made "in the course of trade or business" as defined under the Tax Code.

However, by admitting that the amount of ₱700,188.39 was acquired in connection with its business transaction albeit not directly with its sale of electricity, petitioner is already estopped from claiming that the amount of ₱700,188.39 is VAT exempt. We quote with approval the finding of the Court in Division on the matter, to wit:

> Pursuant to the above provisions, the VAT is imposed on a sale or transaction entered into by a person in the course of any trade or business. A transaction is in the course of trade or business when: (1) regularly conducted; and (2) undertaken in pursuit of a commercial or economic activity. Likewise, transactions that are made incidental to the pursuit of a commercial or economic activity are considered as entered into in the course of trade or business. 'Incidental' means something else as primary; something necessary, appertaining to, or depending upon another, which is termed the principal (Deoferio, Jr. and Mamalateo, The Value Added Tax in the Philippines, First Edition, pp. 81-82). Hence, an isolated transaction is not necessarily disqualified from being made incidentally in the course of trade or business.
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> In this case, by **petitioner's own admission, the amount of P700,188.39 was acquired in connection with its business transactions, though the same may not be directly connected with its sale of electricity. Clearly, the same are incidental transactions in the pursuit of petitioner's business**. Accordingly, petitioner's miscellaneous income, being incident to the pursuit of its

> commercial or economic activity, should be subjected to VAT. (*Boldfacing supplied*)

The income payments made to KEPCO, a non-resident foreign corporation, pursuant to the MTSA is exempt from FWT by virtue of the RP-Korea Tax Treaty.

Respondent believes that the income payments of ₱65,378,965.93 made by petitioner to KEPCO pursuant to the MTSA should be subjected to FWT for at the time of payment, petitioner's application for tax treaty relief was still pending. In fine, there was yet no exemption from VAT in its favor to speak of. Respondent opines that for petitioner to benefit under the RP-Korea Tax Treaty, its Application for Relief from Double Taxation should have been filed fifteen (15) days prior to the transaction or payment of services rendered by KEPCO under the MTSA as required under Revenue Memorandum Order (RMO) No. 01-00 dated November 25, 1999, which states:

> II. Coverage:
>
> This Order covers exclusively applications for tax treaty relief, including claims or requests for tax exemption, preferential tax treaty rate, refund or credit of taxes on the following income derived or to be derived by the taxpayer under existing tax treaties, to wit:
>
> a. dividends
> b. interests
> c. royalties
> d. business profits
> e. gains from sale of shares of stocks
> f. salaries, compensation, etc.
> g. income from services (entertainment, profession, etc.)
> h. profits from the operation of ships and air carriers

m/

i. all other income covered by tax treaties

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III. Policies:

In order to achieve the above-mentioned objectives, the following policies shall be observed:

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2. Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD at least 15 days before the transaction i.e. payment of dividends, royalties, etc., accompanied by supporting documents justifying the relief. Consequently, BIR Form Nos. TC 001 and TC 002 prescribed under RMO 10-92 are hereby declared obsolete.

In the very recent case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue,* [14] the Supreme Court elucidated that taxpayers cannot be deprived of their entitlement to the benefit of a treaty for failure to comply with an administrative issuance requiring the prior application for tax treaty relief. The obligation to comply with a tax treaty must take precedence over RMO No. 01-00. The pertinent portion of the Decision is quoted hereunder, for easy reference:

Tax Treaty vs. RMO No. 1-2000

Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pactasuntservanda* demands the performance in good faith of treaty obligations on the part of the states that

[14] G.R. No. 188550, August 19, 2013

enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction.

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'A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken.' Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. xxx

Likewise, it must be stressed that there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period. We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.

Bearing in mind the rationale of tax treaties, **the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period**

> **under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.**
>
> **The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.** (*Boldfacing supplied*)

It was admitted that petitioner filed its application for tax treaty relief[15] only on September 6, 2007, or long after the transaction. To date, the said application is still pending determination by the BIR-ITAD. However, as discussed by the Supreme Court in the above-cited case, petitioner cannot be deprived of the benefits under the RP-Korea Tax Treaty for its inability to strictly comply with the period prescribed for the filing of the application under RMO No. 01-00. Respondent may however impose a fine or penalty for non-compliance with the prescribed period.

Consequently, petitioner is not liable to pay any deficiency FWT on the income payments made to KEPCO pursuant to the MTSA amounting to ₱65,378,965.93 for taxable year 2006.

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[15]Exhibit "H-1", *rollo*, p. 702.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The Decision promulgated on October 23, 2012 is **MODIFIED**. Accordingly, petitioner Kepco Ilijan Corporation is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amount of **FIFTY ONE MILLION ONE HUNDRED THIRTY SIX THOUSAND SIX and 76/100 PESOS (₱51,136,006.76)**, representing deficiency VAT and Final Withholding Tax for the taxable year 2006, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

	Basic	25% Surcharge	Total
VAT	₱ 29,237,720.89	₱ 7,309,430.22	₱ 36,547,151.11
FWT	11,671,084.52	2,917,771.13	14,588,855.65
Total	**₱40,908,805.41**	**₱10,227,201.35**	**₱51,136,006.76**

In addition, petitioner is **ORDERED TO PAY** the:

(a) deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249(B) of the NIRC of 1997:

(1) on the basic VAT of **₱29,237,720.89** computed from January 25, 2007, until full payment thereof; and

(2) on the basic FWT of **₱11,671,084.52** computed from January 15, 2007, until full payment thereof.

(b) delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency taxes of **₱51,136,006.76** computed from August 15, 2009 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended; and

(c) delinquency interest at the rate of twenty percent (20%) per annum on the deficiency interest which have accrued as aforestated (a), computed from

August 15, 2009 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Liban
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