REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

SUMISETSU PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1352
(CTA CASE NO. 8062)

x--x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SUMISETSU PHILIPPINES, INC.,
Respondent.

CTA EB NO. 1354
(CTA Case No. 8062)

Present:

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

Promulgated:

MAR 16 2018

x---x

RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution of this Court are the following:

1. Sumisetsu's **Motion for Reconsideration (Of the Decision dated 25 May 2017)**, filed by registered mail on July 17, 2017 and received by the Court on July 25, 2017, without the CIR's comment per Records Verification Report dated October 19, 2017; and

2. the CIR's **Motion for Partial Reconsideration**, filed by registered mail on July 5, 2017 and received by the Court on July 13, 2017, with Sumisetsu's **Comment/Opposition (On Petitioner's Motion for Reconsideration dated 5 July 2017)**, filed on September 13, 2018.

Both motions assail the Decision promulgated on March 25, 2017 (assailed Decision), denying both Petitions for Review in CTA EB Nos. 1352 and 1354, the dispositive part of which states:

> "**WHEREFORE,** the Petition for Review of Sumisetsu Philippines, Inc. in CTA EB No. 1352 and the Petition for Review of the Commissioner of Internal Revenue in CTA EB No. 1354 are both **DENIED** for lack of merit.
>
> Accordingly, the Assailed Decision dated May 26, 2015 and the Assailed Resolution dated August 13, 2015 of the Court's Special Second Division in CTA Case No. 8062 are **AFFIRMED** *in toto.*
>
> **SO ORDERED.**"

In its motion, Sumisetsu avers that requiring proof of the authority of the certifying officer is only required for records not kept in the Philippines under Rule 132, Section 24 of the Revised Rules on Evidence and that records kept in the Philippines are covered by the presumption of regularity.

Sumisetsu also propounds that *Corpuz v. People*[1] should govern instead of *Arnaldo v. Commission on Elections*[2] and the facsimile copy of the SBFE Certification of Registration of Penta-Shimizu and the **photocopy of the certified true copy** of the Certification of Registration of Sanyo should be considered for purposes of Sumisetsu's refund claim.

[1] G.R. No. 180016, April 29, 2014.
[2] G.R. No. 210164, August 18, 2015.

As further grounds for reconsideration, Sumisetsu claims that the input VAT from official receipts which failed to separately indicate the VAT should be allowed as Section 4.110-6 of Revenue Regulation (RR) No. 16-2005, as amended, clearly allows the utilization of input VAT despite the failure to separately indicate VAT. The input VAT from official receipts and invoices dated outside the claim period should likewise be allowed as, under Revenue Memorandum Circular (RMC) No. 42-2003, attribution to zero-rated sales is not a precondition to allow out of period invoices and receipts.

Lastly, Sumisetsu argues again that the ICPA's findings must be given weight and that the carry over of excess input tax from taxable year 2007 should have been allowed in order for Sumisetsu to benefit from the carry over input VAT worth ₱11,100,813.63.

The CIR's "Motion for Partial Reconsideration" of the Court *En Banc's* Decision, on the other hand, is based on the following grounds:

1. The Supreme Court upheld the denial of the claim for refund based on the CTA's finding that the taxpayer had underpaid its taxable income and the underpayment was even greater than the amount being claimed for refund;

2. Respondent's sale of services that do not qualify for zero-rating should be subjected to 12% VAT and, hence, the output VAT thereon should be deducted from the amount of alleged unutilized input VAT being claimed for refund; and

3. The determination of respondent's liability for the 12% output VAT is merely for the purpose of ascertaining respondent's entitlement to its alleged unutilized input VAT subject of the present claim.

After considering the arguments of both parties, it is apparent to this Court that, indeed, the arguments raised by the CIR in its Motion for Reconsideration are not new. They have been previously discussed and considered in the Decision dated May 26, 2015 and the Resolution dated August 13, 2015 of the Special Second Division in CTA Case No. 8062. More importantly, they have also been exhaustively studied and considered by this Court prior to rendering our Decision dated May 25, 2017.

Considering that no new matters have been raised, Sumisetsu's **Motion for Reconsideration (of the Decision dated 25 May 2017)** and the CIR's **Motion for Partial Reconsideration** are **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
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

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Official Business)
CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice