REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

MY SOLID TECHNOLOGIES & DEVICES CORPORATION,
Respondent.

CTA *EB* NO. 1767
(CTA Case No. 8854)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

AUG 09 2019
1:23 p.m.

x- -

D E C I S I O N

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* is the instant Petition for Review[1] by the Commissioner of Internal Revenue (CIR) posted on February 2, 2018 seeking the reversal of the Decision dated August 4, 2017 and the Resolution dated January 4, 2018, promulgated by the First Division of this Court (Court in Division) in CTA Case No. 8854 entitled, *My Solid Technologies & Devices Corporation vs. Commissioner of*

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[1] EB Docket, pp. 5-11.

Internal Revenue, the dispositive portions of which read as follows:

Decision dated August 4, 2017

> **"WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency value-added tax assessment covering the period from January 1, 2012 to June 30, 2012 in the aggregate amount of P65,928,415.74 is **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED**."

Resolution dated January 4, 2018

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED."**

THE FACTS

The following facts of the case as narrated by the Court in Division in its Decision dated August 4, 2017 and as established by evidence on record, read as follows:

> "Petitioner My Solid Technologies and Devices Corporation seeks the cancellation and withdrawal of the assessment issued against it by the Commissioner of Internal Revenue for alleged deficiency value-added tax (VAT) covering the period from January 1, 2012 to June 30, 2012 in the aggregate amount of P65,928,415.74.
>
> Petitioner is a corporation duly organized and existing under Philippine laws. It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification No. (TIN) 007-283-114-000 as evidenced by its Certificate of Registration No. OCN9RC0000312624 dated May 18, 2009.
>
> On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC)or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 23, 2012, petitioner filed its Quarterly VAT Return for the 1st quarter of 2012, but the said return was later amended on May 2, 2012.

On May 29, 2012, the Securities and Exchange Commission (SEC) approved the Plan and Agreement and the Articles of Merger executed by petitioner, as the surviving corporation, and Mytel Mobility Solutions, Inc. ("Mytel" for brevity), as the absorbed corporation, on April 25, 2012.

Petitioner and Mytel both filed their respective Quarterly VAT Returns for the 2nd quarter of 2012 on July 25, 2012.

On February 6, 2013, respondent issued a Letter of Authority (LOA) No. LOA-V08-2013-00000066 which authorized Revenue Officer Jasmin Pawingi and Group Supervisor Leonora Bornales to examine petitioner's books of accounts for the period covering January 1, 2012 to June 30, 2012 in connection with respondent's VAT Audit Program under Revenue Memorandum Order (RMO) No. 20-2012. The LOA was received by a certain Ms. Celeste H. Cerillo on February 8, 2013. Respondent informed petitioner, through a Notice for an Informal Conference dated June 25, 2013, that the latter was found to be liable for deficiency VAT for the period covering January 1, 2012 to June 30, 2012 in the amount of P61,316,119.26.

Subsequently, respondent issued a Preliminary Assessment Notice (PAN) dated October 31, 2013 with attached Details of Discrepancies and received by petitioner on even date, assessing the latter for deficiency VAT in the aggregate amount of P61,449,073.64 covering the period January 1, 2012 to June 30, 2012.

Respondent subsequently issued a Formal Assessment Notice (FAN) on December 2, 2013 with attached Details of Discrepancies which petitioner received on December 3, 2013, requesting petitioner to pay the alleged deficiency VAT in the total amount of P65,928,415.74, computed as follows:

Taxable receipts per VAT returns				₱ 340,184,183.99
Output tax				40,822,102.08
Less:	Input tax carried over from previous quarter		₱ 11,448,182.73	
	Claimed input tax		40,017,741.93	
	Total available input tax		₱ 51,465,924.66	
	Less:	Disallowed IT carried over from previous quarter	11,448,182.73	
		Unsupported input tax	40,017,741.93	

		Excess IT carried over to succeeding quarter	10,159,773.44	(10,159,733.44)
VAT Payable				₱ 50,981,875.52
Less: Payments per ITS				42,265.56
Basic Value Added Tax due				₱ 50,939,609.96
Add: Interest (7/26/12 to 1/14/14)				14,988,805.78
Total Amount Due				₱ 65,928,415.74

Consequently, petitioner administratively protested the said assessment on January 2, 2014.

Due to the inaction of respondent on petitioner's protest, the latter filed this Petition for Review on July 31, 2014.

Respondent filed his Answer on September 5, 2014 and interposed the following special and affirmative defenses:

6. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers that:

7. Section 228 of the 1997 Tax Code partly reads as follows:

"Sec. 228. Protesting Assessment

xxx xxx xxx

8. Further yet, Section *(sic)* 7 and 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282 and RA No 9503, which enumerates the cases over which the Court of Tax Appeals has appellate jurisdiction, relevantly states:

xxx xxx xxx

9. Indubitably, the Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction (Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 5, 2010 citing Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, 522 SCRA 144, 150). Its jurisdiction may only be invoked in the particular instances enumerated in Section 7 of Republic Act (RA) No. 1125, as amended by Section 7 of

RA No. 9282 (Moog Controls Corporation Philippine Branch vs. Commissioner of Internal Revenue, CTA EB. No. 44, May 10, 2005). Verily, Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals provides that only decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue can be subject of appeal before this Court. And considering that the petitioner failed to file the necessary supporting documents, the assessment in the instant case already became final and executory, and demandable.

xxx xxx xxx

10. At the outset, the Formal Assessment Notice (FAN) and its Details of Discrepancies both dated December 2, 2013, reflect the internal revenue liabilities of the petitioner for the taxable period from January 1, 2012 to June 30, 2012, to wit:

x x x

Disallowed input tax carried over from previous quarter, ₱11,448,182.73. – Analysis of your 2nd quarter return disclosed that you have input tax carried over from previous quarter in the amount of ₱11,448,182.73, however, upon verification of previous vat return there was no excess input tax to be carried forward to the 2nd quarter. Subsequently, it was unveiled that the Board of Directors of your company and Mytel Mobilities Solutions, Inc. (Mytel) had approved the plan of merger effective May 29, 2012, in which your company will be the surviving entity, thus, the unused input tax of Mytel in the amount of ₱10,159,73.44 was being carried in your 2nd quarter return. However, per our records there was no application for merger or any notification filed in the BIR. Please be informed that Section 235 (e) of the Tax Code prescribes that ***'Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.'*** Moreover, Sec. 236 (F) of the NIRC states that ***'The registration of any person who ceases to be liable to a tax type shall be cancelled upon filing with the Revenue District Office where he is registered an application for registration information update in a form prescribed therefor.*** In the view of the above, the unused input tax of Mytel cannot be allowed as carried over by your company.

Unsupported Input Tax, ₱40,017,741.93 – Verification disclosed that you claimed input tax in the amount of ₱40,503,645.60. Upon audit, it was found that the claimed input tax of ₱38,072,631.00 came from importation made by Mytel of June 2012 but since you failed to notify the BIR through filing of an application of merger/cancellation pursuant to Sec. 235 (e) and Sec. 236 (F) of the NIRC, therefore, the said claimed input tax cannot be allowed as deduction from your output tax. With regard to the remaining input tax of ₱2,431,014.60, during audit you presented official receipts and sales invoices, however, your claimed input tax per summary lit of purchases did not match with the presented documents, hence, disallowed pursuant to Section 110 of NIRC as implemented by Revenue Regulation No. 16-2005.

Excess Input tax Carried Over to Succeeding Quarter, ₱10,159,773.44 – The excess input tax was not applied against the allowable input tax in computing deficiency value-added tax since this was already carried over to the next succeeding period/quarter(s) as provided under Section 110 (B) of the Tax Code, as amended.

11. Further yet, A *(sic)* revenue regulation, the issuance of which is authorized by statute, has the force and effect of law (*Vitug & Accosta, Tax Law and Jurisprudence, 3rd Edition, p. 55*);

12. Assessment *(sic)* are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. *(Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109)*;

13. Over and above all, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another.- **Non videtur quisquam id capere quod ei necesse est alii restitutere**."

> On January 28, 2015, the Pre-Trial Brief (for the Respondent) was filed through registered mail and received by this Court on February 4, 2015; while petitioner's Pre-Trial Brief was submitted on March 6, 2015. Subsequently, the parties filed their Joint Stipulation of Facts and Issues on March 27, 2015, which the Court approved on April 8, 2015. As such, the Court issued a Pre-Trial Order and terminated the pre-trial on April 22, 2015.
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> During trial, petitioner presented Mr. Jundelito C. Abiera as its sole witness. Petitioner formally offered its testimonial and documentary evidence, which the Court admitted, except for Exhibits "P-12-231" and "P-12-291".
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> xxx xxx xxx
>
> On the other hand, respondent presented Ms. Jasmin T. Pawingi as his sole witness. Then, respondent formally offered his testimonial and documentary evidence, which were all admitted by the Court, except for Exhibit "R-1-a".
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> Xxx xxx xxx
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> The case was deemed submitted for decision on August 12, 2016, considering petitioner's Memorandum filed on August 8, 2016 and the Records Verification dated July 22, 2016, stating that respondent failed to file a memorandum."

On August 4, 2017, the Court in Division promulgated the Assailed Decision.[2]

Petitioner CIR then filed a Motion for Reconsideration on August 15, 2017 which was denied for lack of merit in the assailed Resolution dated January 4, 2018.

Petitioner thereafter posted the instant Petition for Review with the Court *En Banc* on February 2, 2018 seeking the reversal and setting aside of the assailed Decision and Resolution dated August 4, 2017 and January 4, 2018, respectively.

In a Resolution dated March 6, 2018, the Court *En Banc* ordered respondent to file its Comment within ten (10) days from receipt thereof.

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[2] EB Docket, pp. 26-64.

On April 10, 2018, respondent filed its Comment to the Petition for Review.

In a Resolution dated May 8, 2018, the Court *En Banc* gave due course to the Petition for Review and required the parties to submit their respective memoranda within thirty (30) days from receipt thereof.

On August 27, 2018, respondent filed its Memorandum while petitioner failed to file his Memorandum within the time prescribed by the Court.[3]

On August 16, 2018, the Court *En Banc* submitted the case for decision.

ISSUES

Petitioner remains steadfast in his position that the assessment issued against respondent is proper and submits that the disallowed input taxes should have been upheld by the Court on the ground that a notice of merger and/or a notice of cancellation of registration has not been filed with the BIR prior to the utilization by respondent of Mytel's unused input VAT.

To simplify, the issue raised by petitioner is whether or not a prior filing of an application for notice of merger and /or notification of closure with the Bureau of Internal Revenue (BIR) is a precondition for the utilization of the unused input value-added tax (VAT) credits of the absorbed corporation.

Petitioner's arguments

Petitioner maintains that the input taxes sourced from the merger between respondent and Mytel Mobility Solutions, Inc. (Mytel) should have been disallowed in the assailed Decision because respondent failed to file any application for merger with the BIR hence any benefits, e.g., transfer of input tax of the absorbed entity to the surviving entity cannot yet be availed of. Petitioner puts forth the theory that unless a taxpayer files a notice of merger with the BIR and settles all of its obligations, the merger cannot be considered as valid,

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[3] Records Verification, EB Docket, page 93.

hence, the transferor's unused input tax cannot be absorbed by or transferred to the transferee.

Petitioner cites Section 235 (e) of the 1997 National Internal Revenue Code (NIRC) which provides that corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability. Further, petitioner asserts that Section 236 (F) of the same Code states that the registration of any person who ceases to be liable to a tax type shall be cancelled upon filing with the Revenue District Office (RDO) where he is registered, an application for registration information update in a form prescribed therefor. Considering that Mytel was the absorbed entity in the merger between the latter and respondent, the filing of an application for cancellation of registration should have also been filed with the BIR because the rules on dissolution equally apply to the absorbed or dissolved entity.

Not having fulfilled the two important requisites, i.e., filing of the notice of merger and the notice of cancellation with the BIR, the merger has no legal effect as far as acquiring the unused input tax credits of the absorbed entity by the surviving entity.

Respondent's counter-arguments

In its Comment, respondent counter-argues that there is nothing in Sections 235 (e) and 236 (F) of the 1997 NIRC that expressly require the prior filing of an application for merger and/or notification with the BIR as a precondition for the transfer of the absorbed corporation's unused input tax credits to the surviving corporation. Respondent cites Section 4.106-8 of Revenue Regulations (RR) No. 16-2005 which provides that in case of merger or consolidation, the unused input taxes of the absorbed corporation shall be transferred to the surviving corporation as of the date of merger. Respondent also cites Section 80 (4) of the Corporation Code of the Philippines (Corporation Code) which provides that a merger shall have the effect of *ipso jure* transferring all the rights and properties of the absorbed corporation to the surviving corporation which includes the unused input taxes of Mytel as part of the latter's assets.

Respondent claims that as a consequence of the statutory merger, the surviving corporation shall acquire the unused input taxes of the absorbed entity and may consequently apply the same to its output tax liabilities. Respondent maintains that petitioner's disallowance of the claimed input taxes has no legal basis.

Respondent also finds it misleading for the petitioner to claim that the non-filing of a notice of merger has prevented the BIR from conducting a thorough investigation of the tax liabilities of Mytel. Respondent asserts that in case of merger, the absorbed corporation will not be able to escape its tax liabilities because its outstanding obligations and liabilities will be transferred, by operation of law, to the surviving corporation pursuant to Section 80 of the Corporation Code. Respondent also avers that the BIR is also not prevented from investigating Mytel's tax liabilities as illustrated by the fact that a Formal Assessment Notice (FAN) has already been issued against it for the first and second quarters of calendar year 2012.

<u>RULING OF THE COURT *EN BANC*</u>

The petition lacks merit.

It is important to understand the provisions of the Corporation Code on merger and thereafter link these with the relevant provisions of the 1997 NIRC and its implementing regulations to get a clear picture of the legal effects of a merger of two corporate entities and consequently resolve the issues raised in this case.

Section 76 of the said Code describes a merger as follows:

> "Two or more corporations may merge into a single corporation which shall be one of the constituent corporations or may consolidate into a new single corporation which shall be the consolidated corporation."

Likewise, Section 80 thereof discusses the legal effects of a merger, and we quote, thus:

> "Section 80. *Effects of merger or consolidation.* – The merger or consolidation shall have the following effects:

1. The constituent corporations shall become a single corporation, which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;
2. The separate existence of the constituent corporations shall cease except that of the surviving or the consolidated corporation;
3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;
4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed;
5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any such constituent corporations shall not be impaired by such merger or consolidation."

The aforequoted sections speak of a statutory merger and its effects, one of which is the transfer of the rights, privileges etc. to the surviving entity.

The Supreme Court, in a consolidated case decided in 2001[4], had the occasion to focus on one of the effects of merger when it ruled, thus:

> "It is settled that in the merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved **and all its rights, properties and liabilities are acquired by the surviving corporation."** (emphasis supplied)

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[4] Babst vs. CA and Elizalde Steel, Inc. vs. CA, G.R. Nos. 99398 and104625, January 26, 2001.

On the other hand, Section 40 (C) (6) (b) of the 1997 NIRC has defined a merger as follows:

> Section 40. *Determination of Amount and Recognition of Gain or Loss.* –
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> xxx xxx xxx
>
> (6) *Definitions.* –
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> xxx xxx xxx
>
> (b) The term "merger" or "consolidation when used in this Section, shall be understood to mean: (i) the ordinary merger or consolidation, or (ii) the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock: Provided, That for a transaction to be regarded as a merger or consolidation within the purview of this Section, it must be undertaken for a *bona fide* business purpose and not solely for the purpose of escaping the burden of taxation: *Provided, further,* That in determining whether a *bona fide* business purpose exists, each and every step of the transaction shall be considered and the whole transaction or series of transactions shall be treated as a single unit: *Provided, finally,* That in determining whether the property transferred constitutes a substantial portion of the property of the transferor, the term "property" shall be taken to include the cash assets of the transferor."

Complementing the effects of merger under the Corporation Code and the 1997 NIRC is Section 4.106-8 (b) (3) of Revenue Regulation (RR) No. 14-2005 or the *"Consolidated VAT Regulations of 2005"* which considers the unused input taxes as part of the properties/assets of the absorbed corporation to be transferred to the surviving corporation, to wit:

> "Section 4.106-8. Change or cessation of Status as VAT-registered Person. –
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> xxx xxx xxx
>
> (3) Merger or consolidation of corporations. – **The unused input tax of the dissolved corporation, as of the date of merger or consolidation, shall be absorbed by the surviving new corporation."** (emphasis supplied)

Petitioner in its allegations in the Petition for Review has not disputed the contention of the respondent that unused input taxes of the absorbed corporation may be transferred to the surviving corporation but harped on the fulfillment of alleged conditions before one can effect such a transfer. Petitioner maintains that the notice of merger should first be filed with the BIR and that the dissolving or absorbed corporation should likewise file a notice of cancellation of business with the BIR.

The contention of petitioner is without legal basis.

Section 79 of the Corporation Code provides the date of effectivity of the merger, and we quote in part as follows:

> "Sec. 79. *Effectivity of merger or consolidation.* – The articles of merger or of consolidation, signed and certified as herein above required, shall be submitted to the Securities and Exchange Commission in quadruplicate for its approval: *Provided*, That in the case of merger or consolidation of banks or banking institutions, building and loan associations, trust companies, insurance companies, public utilities, educational institutions and other special corporations governed by special laws, the favorable recommendation of the appropriate government agency shall first be obtained. If the Commission is satisfied that the merger or consolidation of the corporations concerned is not inconsistent with the provisions of this Code and existing laws, **it shall issue a certificate of merger or of consolidation, as the case may be, at which time the merger or consolidation shall be effective.**" *(Emphasis supplied)*
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> *xxx* *xxx* *xxx*

The so-called certificate of merger mentioned in Section 79 of the Corporation Code is actually known as the "Certificate of Filing of the Articles and Plan of Merger" issued by the SEC and signifies that the SEC has approved the Articles and Plan of Merger prepared by the parties. Strictly following the provisions of Section 79 of the Corporation Code, the merger shall take effect upon issuance by the SEC of the Certificate of Filing of the Articles and Plan of Merger. In the case of *Mindanao Savings and Loan Association, Inc. vs. Willkom*[5], the Supreme Court held, thus:

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[5] G.R. No. 178618, October 20, 2010.

> **"Clearly, the merger shall only be effective upon the issuance of a certificate of merger by the SEC,** subject to its prior determination that the merger is not inconsistent with the Corporation Code or existing laws." xxx xxx xxx (emphasis supplied)

In that same case, the Supreme Court marks the exact period when the legal effects of the merger will take place, and we quote:

> "The issuance of the certificate of merger is crucial because not only does it bear out SEC's approval **but it also marks the moment when the consequences of a merger take place.** By operation of law, upon the effectivity of the merger, the absorbed corporation ceases to exist but its rights and properties, as well as liabilities, shall be taken and deemed transferred and vested in the surviving corporation." (emphasis supplied)

The foregoing general rule on the effectivity of the merger has taken an exception under BIR Ruling No. 032-2002 dated August 12, 2002, which held:

> "For purposes of compliance with BIR reportorial requirements on merger, the general rule is that the effective date of merger shall be the date of approval by the SEC of the Articles and Plan of Merger pursuant to Section 79 of the Corporation Code. In this case, the SEC approved the merger on April 30, 2002. **However, when the parties to the merger provided for a date when their merger shall take effect, in which case, the effective date of merger shall be the date agreed upon by the constituent corporations (as stated in the Plan of Merger),** which in this case is June 30, 2002. Thus, for purposes of complying with the requirements of the post merger notice and filing of the short period return under Section 52 (c) of the Tax Code of 1997, the 30 day period shall be reckoned from the effective date of merger, June 30, 2002." (emphasis supplied)

In the instant case, the records show that the Certificate of Filing of the Articles and Plan of Merger was issued by the SEC on May 29, 2012. However, in the assailed Decision it reckoned the effectivity of the merger on June 1, 2012 based on the express provision of the Articles of Merger and as agreed upon by the parties, which may fall under the exception. Be that as it may, the unused input tax credits were used by respondent after the certificate of merger was issued on May 29, 2012, therefore we can safely conclude that said input tax credits were already transferred to the respondent by virtue of the effectivity of the merger.

We also assent to the rationale of the Court in Division when it conclusively stated in the assailed Resolution that petitioner CIR failed to provide a provision of law which requires that the notice of merger filed with the BIR is a precondition for the transfer of the absorbed corporation's unused input tax credits to the surviving corporation in cases of merger.

Sections 235 (e) and 236 (F) of the 1997 NIRC cited by petitioner as his legal bases do not contain any such conditions contrary to his claim. We quote Sections 235 (e) and 236 (F), thus:

> "Section 235. *Preservation of Books of Accounts and Other Accounting Records.* –
>
> (e) In the exercise of the Commissioner's power under Section 5 (B) to obtain information from other persons in which case another or separate examination and inspection may be made. Examination and inspection of books of accounts and other accounting records shall be done in the taxpayer's office or place of business or in the office of the Bureau of Internal Revenue. All corporations, partnerships and persons that retire from business shall, within then (10) days from the date of merger or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including their subsidiary books and other accounting records to the Commissioner or his deputies for examination after which they shall be returned. Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability."
>
> xxx xxx xxx
>
> "Section 236. *Registration Requirements.* –
>
> (F) Cancellation of Registration
>
>> (1) General Rule. – The registration of any person who ceases to be liable to a tax type shall be cancelled upon filing with the Revenue District Office where he is registered, an application for registration information update in a form prescribed therefor."

A close reading of the afore-quoted sections cited by petitioner refers to the closure or dissolution of registered entities which would require these entities to file an application for cancellation of registration with the BIR and do not refer to the conditions to be complied with before the legal effects of a merger may be realized under the relevant provisions of the Corporation Code.

In the closure of juridical entities, the BIR will not grant the application for cancellation of registration (which includes the cancellation of their Tax Identification Numbers (TINs)) until all tax liabilities of the closing entity are settled and all penalties for non-filing of tax returns are paid. The closing entity shall be required to submit its accounting records and other documents to enable the revenue officers to conduct an examination to determine its remaining tax liabilities, if any. This process is to ensure that all unpaid taxes and penalties will be paid/settled by the closing entity before the BIR finally cancels its registration and its corresponding TIN. The same requirements apply to an ordinary closure of a company and that of a dissolution of a company by way of merger because in all cases, the registration with the BIR has to be cancelled.

The effects of a closure of a company from a tax perspective should be distinguished from the effects of a statutory merger resulting to a dissolution of the absorbed company under the provisions of the Corporation Code. Although both contemplate a situation wherein an entity is dissolved, the effects under the 1997 NIRC and the Corporation Code are different. The legal effects of a statutory merger is clear from the provisions of the afore-quoted Section 79 of the Corporation Code and Section 40 (C) (6) (b) of the 1997 NIRC as implemented by RR 14-2005, while Section 80 of the Corporation Code provides the period when these legal effects shall take place.

The conditions before the registration of a closing entity is cancelled under the 1997 NIRC are not the same conditions before the legal effects of a statutory merger may take place. Petitioner failed to make this distinction, hence, resulting to an erroneous application of the provisions of the 1997 NIRC to a statutory merger governed by the Corporation Code.

Accordingly, we rule against the contention of petitioner that a notice of merger and/or an application of cancellation of registration filed with the BIR are conditions before the effects of a statutory merger may take place which include, among others, the transfer of the properties, i.e., input tax credits, of the absorbed corporation, Mytel, to the surviving corporation which is the respondent, in this case.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The Decision dated August 4, 2017 and the Resolution dated January 4, 2018 of the First Division in CTA Case No. 8854 are **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

(on leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice