REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus* -

WATERFRONT MACTAN CASINO HOTEL, INC.
Respondent.

CTA EB NO. 1060
(CTA Case No. 8222)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

SEP 15 2015
2:25 p.m.

x--x

DECISION

BAUTISTA, J:

The Case

Before the Court *En Banc* is a Petition for Review[1] to nullify the Decision of the Special Second Division of the Court ("Court in Division") dated May 31, 2013,[2] as well as the Resolution dated

[1] *Rollo,* CTA EB Case No. 1002 (CTA Case no. 8222), pp. 7-20.
[2] Penned by Associate Justice Cielito N. Mindaro-Grulla with Associate Justices Juanito C. Castaneda, Jr. and Caesar A. Casanova concurring, pp. 23-42., *Annex "A."*

August 23, 2013,[3] pursuant to Section 2(d) of Rule 4[4] and Section 4(b) of Rule 8[5] of the Revised Rules of the Court of Tax Appeals.[6]

The Parties[7]

Petitioner is the duly appointed Commissioner (hereinafter referred to as the "Commissioner") of the Bureau of Internal Revenue ("BIR"). She is empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or issuance of tax credit certificate as provided by law. She holds office at the 4th floor, BIR National Office Building Agham Road, Diliman, Quezon City, where she may be served with notices and other court processes.

Respondent Waterfront Mactan Casino Hotel, Inc. (hereinafter referred to as "WMCHI") is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at Salinas Drive, Lahug, Cebu City, where it may be served with notices and other court processes.

The Facts

As stated in the Decision dated May 31, 2013,[8] the factual antecedents of this case are as follows:

> "On August 31, 2007, [Commissioner] issued Letter of Authority No. 200700007009 for the purpose of examining [WMCHI] books of accounts and other

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[3] *Id.*, pp. 62-68.
[4] RULE 4 - JURISDICTION OF THE COURT

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SEC. 2. *Cases within the jurisdiction of the Court en banc.* - The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

xxx xxx xxx

> (d) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over tax collection cases;

[5] RULE 8. PROCEDURE IN CIVIL CASES
SEC. 4. *Where to appeal; mode of appeal.* -

xxx xxx xxx

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.
[6] *Rollo*, CTA EB Case 1034, p. 6.
[7] *Id.*, p. 8.
[8] *Id.*, pp. 36-61.

accounting records for all internal revenue taxes for the taxable period January 1, 2006 to December 31, 2006. The examination of [WMCHI's] business operations led to the eventual issuance by [Commissioner] of a Preliminary Assessment Notice [('PAN')] on March 16, 2009 and a Formal Letter of Demand [('FLD')] and Audit Result/Assessment Notice dated January 5, 2010, covering deficiency income tax, withholding tax on compensation, and [Value-Added Tax ('VAT')] for the taxable year 2006. The summary of the deficiency tax assessments is as follows:

	BASIC	**INCREMENTS**	**TOTAL**
Income Tax Deficiency	P22,290.04	P11,145.02	P33,435.06
Withholding Tax on Compensation Deficiency	6,232.77	3,428.02	9,660.79
Value-added Tax Deficiency	13,673,238.47	8,431,830.39	22,105,068.86
Total Deficiency Taxes	**P13,701,761.28**	**P8,446,403.43**	**P22,148,164.71**

In a letter to [Commissioner] dated June 24, 2010, [WMCHI] manifested that it already paid the assessments for deficiency withholding tax on compensation and income tax through e-payment facility. With respect to the assessment for deficiency VAT, [WMCHI] informed [Commissioner] that it initially charged Philippine Amusement and Gaming Corporation [('PAGCOR')] with output tax, but the said corporation disputed it based on PAGCOR's claim that it is VAT-exempt and it even furnished [WMCHI] with a copy of the Court Order in OSJ Case No. 2004-1, declaring PAGCOR's exemption from all taxes.

It appears that the factual basis of the deficiency VAT assessment was the income payments received by [WMCHI] from PAGCOR that were not subjected to VAT, computed as follows:

Sales to PAGCOR	
Add: Sales/Revenue not subject to VAT	P28,529,561.10

Unsupported Exempt Sales	83,540,274.54
Total Sales to PAGCOR not subjected to VAT	**P112,069,835.64**

On July 30, 2010, [Commissioner] issued the Final Decision on Disputed Assessment ['FDDA'], informing [WMCHI] that its protest was duly 'reconsidered' but respondent maintained that petitioner's claim for VAT-exempt sales to PAGCOR has no legal basis, to wit:

VAT Sales per VAT return		P135,167,626.46
Add: Sales to PAGCOR		
Sales/Revenue not subjected to VAT	P28,529,561.10	
Unsupported exempt sales	83,540,274.54	112,069,835.64
		247,237,462.10
Output Tax		29,668,495.45
Less: Input Tax per VAT returns		11,964,377.62
VAT Due	17,704,117.83	17,704,117.83
Less: VAT payments per return		4,255,737.56
Deficiency VAT		13,448,380.27
Add: Interest		9,189,726.52
Total Deficiency VAT		**P22,638,106.79**

[WMCHI] was likewise informed that the above deficiency tax assessment should be paid immediately and that the same was [Commissioner's] final decision, hence, the instant petition.

[Commissioner] filed her Answer on March 7, 2011, where she raised the following Special and Affirmative Defenses:

> 'The [PAGCOR] is not exempt from the payment of income and VAT pursuant to the provision of [Republic Act ('RA') 9337; and
>
> The Administrative Protest filed by petitioner did not state the applicable laws, rules and regulations, or jurisprudence on which the protest is based. Hence, the same is

> without force and effect and the assessment notice was rendered final, executory and demandable.'

Thereafter, on March 8, 2011, notice was issued for a pre-trial conference set on April 14, 2011, which was reset to May 12, 2011.

[WMCHI] filed its Pre-trial Brief on May 10, 2011; while [the Commissioner] filed her Pre-trial Brief on April 11, 2011.

On July 8, 2011, the parties filed with [the Court in Division] their Joint Stipulation of Facts and Issues, which was later approved in a Resolution dated July 12, 2011. In the same Resolution, the pre-trial conference was deemed terminated.

Trial proceeded, during which [WMCHI] presented Ms. Precilla O. Toriano as its sole witness.

On January 31, 2012, [WMCHI] filed its Formal Offer of Evidence, offering Exhibits 'A' to 'G,' inclusive of submarkings; which [the Court in Division] admitted in a Resolution dated March 13, 2012. 12

The documentary evidence formally offered by [WMCHI] and admitted are as follows:

EXHIBITS	DESCRIPTION
A	Photocopy of formal protest dated June 24, 2010, filed by the petitioner with the Bureau of Internal Revenue [Large Taxpayers Division Office ('LTDO')]-Cebu City on June 25, 2010.

B	Certified true copy of the Contract of Lease – issued by the National Archives of the Philippines on August 22, 2011 – executed by WMCH and PAGCOR dated September 13, 1995 consisting of 24 pages acknowledged by the parties before Notary Public Carlos R. Bautista, Jr. of the City of Manila and recorded in his notarial register as Doc. No. 220, Page No. 24, Book No. VI, Series of 1995.
B-1	Original copy of Official Receipt No. 1327525 V dated August 24, 2011 in the amount of P182.00 issued by the National Archives of the Philippines.
C	Certified true copy of the Amended Contract of Lease – issued on August 26, 2011 by the Regional Trial Court of Manila as repository of notarial records for the year 2003 – executed by WMCH and PAGCOR dated January 31, 2003 consisting of 12 pages acknowledged by the parties before Notary Public Carlos R. Bautista, Jr. of the City of Manila and recorded in his notarial register as Doc. No. 2, Page No. 99, Book No. IX, Series of 2003.
D	Certified true copy of the Supplement to the Amended Contract of Lease – issued on August 26, 2011 by the Regional Trial Court of Manila as repository of notarial records for the year 2003 – executed by WMCH and PAGCOR consisting of three pages acknowledged by the parties on December 30, 2003 before Notary Public Roderick R. Concolacion of the City of Manila and recorded in his notarial register as Doc. No. 432, Page No. 88, Book No. VII, Series of 2003.
E	Certified true copy of the Addendum to Supplement to the Amended Contract of Lease dated January 9, 2004 – issued by the National Archives of the Philippines on August 22, 2011 – executed by WMCH and PAGCOR consisting of four pages acknowledged by the parties on January 13, 2004 before the Notary Public Renato U. de Pano, Jr. of the City of Manila and recorded in his notarial register as Doc. No. 745, Page No. 149, Book No. VIII, Series of 2004.
E-1	Original copy of Official Receipt No. 1327526 V dated August 24, 2011 in the amount of P57.00 issued by the National Archives of the Philippines.

F	Certified true copy of the Addendum to Amended Contract of Lease — issued on August 26, 2011 by the Regional Trial Court of Manila as repository of notarial records for the year 2005 — executed by WMCH and PAGCOR consisting of five pages acknowledged by the parties on January 21, 2005 before Notary Public Roderick R. Concolacion of the City of Manila and recorded in his notarial register as Doc. No. 79, Page No. 84, Book No. I, Series of 2005.
F-1	Original copy of Judiciary Official Receipt No. 1200506 issued by the Regional Trial Court - Manila Court on August 26, 2011 in the amount of P200.00.
G	Original copy of the Judicial Affidavit of Ms. Precilla O. Toriano dated October 10, 2011 and submitted before the Court on October 10, 2010 (sic).

[Commissioner] likewise, presented its sole witness, Mr. Roben H. Saguin.

On June 11, 2012, [Commissioner] filed her Formal Offer of Documentary Evidence, offering Exhibits '1' to '14,' inclusive of submarkings; which this Court admitted in a Resolution dated July 12, 2012.

The documentary evidence formally offered by [Commissioner] and admitted are as follows:

EXHIBITS	DESCRIPTION
1	Letter of Authority ('LOA') No. 00007009 dated August 31, 2007 given to Revenue Officers Jennifer Almedilla, Miguel Sulit and Roben Saguin signed by Marissa Cabreros, Head Revenue executive Assistant ('HREA') Administrative & Enforcement (LTDO Makati and Cebu)
1-A	Date/Signature of taxpayer/authorized representative, Hannah M. Mendoza, September 10, 2007
2	Checklist of Requirements duly signed by Jane T. Tumagan, Group Supervisor Re: Data Files requests for tax audit per LOA No. 00007009
2-A	Date of receipt on by petitioner's representative, Hannah M. Mendoza, Sept. 10, 2007
3	Second Request for the Presentation of Records dated October 16, 2007 (including attachment) duly signed by Jane Tumagan, Group Supervisor
3-A	Date of receipt by petitioner's representative, Hannah M. Mendoza, October 17, 2007

4	Third Notice (Additional Requirements) duly signed by Jane Tumagan, Group Supervisor
4-A	Receipt on by petitioner's representative, Catherine Batad
5	Revalidation of the Letter of Authority on February 13, 2008 (shown on the face of Letter of Authority) By: Marissa Cabreros, HREA, Administrative & Enforcement (LTDO Makati & Cebu)
6	Notice for Informal Conference dated May 28, 2008 duly signed by Conrado Lee, OIC-Chief, LTDO Cebu
6-A	Receipt on by petitioner's representative, Catherine Batad on June 4, 2008
7	Memorandum Report dated December 12, 2008 duly signed by Roben Saguin, et al. (inclusive of attachments) Re: Recommendation for the issuance of PAN
8	[PAN] dated March 16, 2009 with Details of Audit Findings and other attachments (8 pages)
9	Memorandum Report dated May 6, 2010 by Roben Saguin, et al. (inclusive of attachments) Re: Recommendation for the issuance of [FLD]
10	[FLD] with Details of Audit Findings duly signed by Zenaida Garcia, Asst. Commissioner for Large Taxpayers Service
10-A	Receipt on by petitioner's representative on June 7, 2010
11	Audit Result/Assessment Notice dated January 5, 2010 signed by Zenaida Garcia, Asst. Commissioner for Large Taxpayers Service (re: VAT, Withholding Tax on Compensation and Income Tax)
12	Memorandum Report dated May 6, 2010 by Roben Saguin, et al. (inclusive of attachments) Re: Recommendation for the issuance of [FDDA]
13	Final Decision on Disputed Assessment dated July 30, 2010 by Zenaida Garcia, Asst. Commissioner for Large Taxpayers Service
13-A	Receipt on by petitioner's representative on January 4, 2011
14	Judicial Affidavit of Roben H. Saguin
14-A	Signature of Roben H. Saguin

On October 1, 2012, the instant case was submitted for decision after the filing of [the Commissioner's] Memorandum on September 20, 2012 sans [WMCHI's] memorandum."

On May 31, 2013, the Court in Division issued a Decision,[9] cancelling the VAT assessment issued against WMCHI for the taxable year 2006 by the Commissioner, stating that:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the value-added tax assessment issued by respondent against petitioner for the taxable year 2006 in the amount of P22,638,106.79 is hereby **CANCELLED** for lack of legal basis.
>
> **SO ORDERED.**"

Unsatisfied with the Decision, the Commissioner filed a Motion for Reconsideration[10] on June 20, 2013. On the other hand, WMCHI failed to file its Comment within the period provided by the Court in Division. On August 16, 2013, the Court in Division issued a Resolution[11] upholding the Decision and denying the Motion for Reconsideration dated June 20, 2013, stating that:

> "**WHEREFORE,** finding no reversible error committed by this Court in rendering the assailed Decision, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

On September 4, 2013, the Commissioner filed a Motion for Extension of Time to File Petition for Review,[12] which was granted by the Court *En Banc* in a Minute Resolution[13] dated September 9, 2013.

Thus, on September 23, 2013, the Commissioner filed the present Petition for Review.[14]

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[9] *Records*, pp. 23-41.
[10] *Id.*, pp. 360-366.
[11] *Id.*, pp. 372-373.
[12] *Rollo*, pp. 1-4.
[13] *Id.*, p. 6.
[14] *Id.*, pp. 7- 22.

On October 18, 2013, the Court *En Banc* issued a Resolution[15] ordering WMCHI to file its Comment, within ten (10) days from receipt.

In compliance with the Resolution thereof, WMCHI filed its Comment[16] to the Petition for Review on November 22, 2013.

On May 28, 2014, the Court *En Banc* issued a Resolution[17] giving due course to the Petition for Review and requiring the parties to submit their respective Memoranda within thirty (30) days from receipt of the Resolution.

On July 15, 2014, the Commissioner filed her "Manifestation"[18] stating that she is adopting the arguments raised in the Petition for Review. While WMCHI failed to file its Memorandum within the period prescribed by the Court, hence, the Court *En Banc* issued a Resolution[19] dated October 10, 2014, stating that the case is deemed submitted for decision.

Hence, this Decision.

The Issue[20]

The issue for resolution before the Court *En Banc* is:

> **WHETHER OR NOT RESPONDENT IS LIABLE FOR THE DEFICIENCY VALUE-ADDED TAX ASSESSMENT FOR THE TAXABLE YEAR 2006 IN THE AMOUNT OF TWENTY-TWO MILLION SIX HUNDRED THIRTY-EIGHT THOUSAND ONE HUNDRED SIX PESOS AND 79/100 (PHP22,638,106.79) PLUS SURCHARGES AND INTEREST.**

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[15] *Id.*, pp. 49-50.
[16] *Id.*, pp.53-60.
[17] *Id.*, pp. 69-70.
[18] *Id.*, p. 74.
[19] *Id.*, p. 80.
[20] *Id.*, p. 10.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the Petition for Review.

WMCHI validly protested the Commissioner's Formal Letter of Demand.

Commissioner claims WMCHI failed to lodge a valid protest against the FLD pursuant to Section 228 of the Tax Code and Revenue Regulations ("RR") No. 12-99[21], and thus the assessment against WMCHI is final, executory and demandable.

In support of Commissioner's claim, she raises two (2) arguments, to wit: (*i*) that the alleged Protest Letter[22] dated June 24, 2010 was not a "valid" protest for WMCHI's failure to state in the same, the facts, the applicable law, rules and regulations, or jurisprudence on which it based its protest, as prescribed by Section 3.1.5 of RR No. 12-99; and (*ii*) that the FLD has become final and executory for WMCHI's failure to submit relevant supporting documents within sixty (60) days from the filing of the Protest Letter, as prescribed by Section 228 of the Tax Code.[23]

The Court *En Banc* shall discuss Commissioner's arguments in seriatim.

Anent the first argument, the Court in Division has settled the issue in this wise:

> "A careful examination of respondent's Final Decision on Disputed Assessment proves that she acknowledged that petitioner's letter dated June 24, 2010 is the latter's protest. The significant parts thereof are quoted hereinafter:
>
> 'WATERFRONT MACTAN CASINO HOTEL, INC.
> No. 1 Airport Road, Mactan, Lapu-Lapu City
> TIN: 003-978-246-000

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[21] *Id.*, pp. 10-13.
[22] *Records, Exhibit "A,"* p. 140.
[23] *Rollo*, p. 11.

FINAL DECISION ON DISPUTED ASSESSMENT

Gentlemen:

Referring to your letter dated June 24, 2010, please be informed that your **protest** against our calendar year 2006 deficiency tax assessment in the amount of PhP22,148,164.71, the subject matter of our covering Formal Letter of Demand (Final Assessment Notice), duly received by your representative last June 7, 2010, is hereby reconsidered as follows:'

xxx xxx xxx

It is requested that the foregoing deficiency taxes amounting to PhP22,638,106.79 be paid immediately upon receipt hereof. **This is our final decision. If you disagree, you may appeal this final decision with the Court of Tax Appeals within 30 days upon receipt hereof, otherwise our herewith deficiency tax assessment on income tax, value-added tax, expanded withholding tax and withholding tax on compensation shall become final, executory and demandable.**

It cannot be ignored that respondent made use of the word 'protest' in reference to petitioner's letter dated June 24, 2010; thus, it is evident that respondent considered the said letter as petitioner's protest and was given due course.

Furthermore, respondent clearly stated that the FDDA constitutes her final decision and petitioner may appeal the said decision with this Court; otherwise, the assessment will be final and executory. Simply stated, respondent made it clear that the only remaining recourse of petitioner is to appeal its case before this Court. Hence, petitioner should not be faulted for merely complying with respondent's statement." ("Emphasis Supplied")

The Court *En Banc* agrees with the aforesaid conclusions reached by the Court in Division and further finds that the protest letter conformed to Section 3.1.5 of RR No. 12-99, which provided that facts, applicable law, rules and regulations, or jurisprudence on which the protest is based must be stated therein.

A perusal of the protest letter dated June 24, 2010[24] reveals that WMCHI stated the following: that it paid the assessment notice with Assessment Notice Ref. Numbers 123-WC-20-2006-2009-09-070-for withholding tax on compensation, and 123-IT-30-2006-2009-07-069-for income tax deficiency, by e-payment facility on June 16, 2010; and that its Value Added Tax ("VAT"), which the output tax being charged against PAGCOR, was subject to a pending legal issue on exemption.

In the case of *Brother Mariano "Mike" Z. Velarde vs. Social Justice Society,*[25] the Supreme Court provided for the different ways of stating facts, to wit:

> "2. Statement of Facts
>
> There are different ways of relating the facts of the case. *First,* under the <u>objective or reportorial method</u>, the judge summarizes -- without comment -- the testimony of each witness and the contents of each exhibit. *Second,* under the synthesis method, the factual theory of the plaintiff or prosecution and then that of the defendant or defense is summarized according to the judge's best light. *Third,* in the subjective method, the version of the facts accepted by the judge is simply narrated without explaining what the parties' versions are. *Finally,* through a combination of objective and subjective means, the testimony of each witness is reported and the judge then formulates his or her own version of the facts." (Emphasis Supplied)

In the instant case, applying the first method in stating a fact, it can be gleaned from the protest letter dated June 24, 2010, that WMCHI objectively stated the fact by providing the reference numbers, the type of tax, the amount, and date of payment.[26] Therefore, facts were stated in its protest letter dated June 24, 2010.

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[24] *Records,* Exhibit "A,"p. 140.
[25] G.R. No. 159357, April 28, 2004, 428 SCRA 283.
[26] *Records,* Exhibit "A," p. 140.

On the other hand, RR No. 9-2002[27] provides for the payment of internal revenue taxes by means of Electronic Filing and Payment System ("EFPS") or e-payment, to wit:

> "SEC.6. CONFIRMATION OF RECEIPTS OF RETURN/S/DOCUMENTS AND PAYMENT/S OF TAXES. - Section 9.1 of RR 9-2001 is hereby amended to read as follows:
>
> > Section 9. CONFIRMATION OF RECEIPT OF RETURN/S DOCUMENTS AND PAYMENT/S OF TAXES.
> >
> > 9.1 e-Filing and e-Payment. - The return is deemed filed, on the date appearing in, and after a Filing Reference Number is generated and issued to the taxpayer via the EFPS. The tax due thereon is deemed paid after a Confirmation Number is issued to the taxpayer and to the BIR by the AAB. In addition, an Acknowledgement Number shall be issued by the AAB to the BIR to confirm that the tax payment has been credited to the account of the government or recognized as revenue (internal revenue tax collection) by the Bureau of Treasury."

Therefore, the fact that WMCHI alleged in its protest letter dated June 24, 2010[28] that the aforesaid Assessment Notice Ref. Numbers 123-WC-20-2006-2009-09-070- for withholding tax on compensation and 123-IT-30-2006-2009-07-069- for income tax deficiency were paid on June 16, 2010 by <u>e-payment</u>, there was basis in law for its allegation.

In sum, there is no validity to respondent's claim that the protest letter dated June 24, 2010 did not state any facts and law as provided in Section 3.1.5 of RR No. 12-99.

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[27] Amending Further Revenue Regulations No. 9-2001, as Amended by Revenue Regulations No. 2-2002, Implementing Filing of Tax Returns and Payment of Taxes thru the Electronic Filing and Payment System (EFPS) and likewise amending partly RR No. 1-9, June 28, 2002.
[28] *Records*, Exhibit "A," p. 140.

Anent the second argument, the Court *En Banc* finds no merit in the Commissioner's claim that WMCHI failed to submit relevant documents within sixty (60) days from the filing of the administrative protest, as prescribed by Section 228 of the Tax Code.

In the case of *Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue* ("Metropolitan Case"),[29] the Supreme Court ruled that the Commissioner cannot validly claim that Metropolitan Bank and Trust Co. failed to submit relevant documents when even the Commissioner herself cannot identify which documents Metropolitan Bank and Trust Co. failed to submit, to wit:

> "The Court cannot simply accept the allegation of the CIR that Metrobank failed to submit the relevant supporting documents within 60 days from the filing of its protest on 17 January 2003, when the CIR does not even identify what these documents are. If the Court does not know what particular documents Metrobank purportedly failed to submit in support of its protest, then the Court likewise cannot make a determination on the relevance of such documents. In addition, there appear to be sufficient documents submitted by Metrobank to the CIR to have enabled the latter to render on 2 March 2004 a Decision on the protest of the former."(Emphasis Supplied)

In the instant case, the Commissioner did not identify the relevant supporting documents which are pertinent to WMCHI's protest. Clearly, it would be unjust to charge WMCHI with failing to submit documents in support of its protest, when the Commissioner has not specified what those documents are.

Therefore, the Commissioner's assertion has no merit on this ground.

[29] G.R. No. 178797, August 4, 2009, 595 SCRA 234.

WMCHI transactions with PAGCOR are subject to a Value-Added Tax of 0% rate.

Commissioner avers that WMCHI transactions with PAGCOR are subject to VAT of twelve percent (12%) pursuant to the passage of RA No. 9337, wherein PAGCOR was excluded from the government institutions that are exempt from paying income tax. Commissioner postulates that WMCHI is under obligation to pay income tax and VAT corresponding to the income payments it received from PAGCOR because the latter is no longer an entity exempt from the payment of internal revenue taxes with the repeal of Presidential Decree ("PD") No. 1869 by RA No. 9337.

In addition, Commissioner contends that the sale transactions between WMCHI and PAGCOR do not fall under the exempt transactions enumerated in Section 109 of the Tax Code.

The aforestated arguments have been thoroughly considered and discussed by the Court in Division when it ruled in the following manner:

> "In fact, the issue of whether or not PAGCOR is liable to pay VAT had been finally settled by the Supreme Court sitting en banc, in favor of PAGCOR, in a case filed by the PAGCOR against the Bureau of Internal Revenue. The meticulous disquisition of the Supreme Court in the case of *Philippine Amusement and Gaming Corporation (PAGCOR) vs. the Bureau of Internal Revenue* [("*PAGCOR Case*")] reads:
>
> xxx xxx xxx
>
> > 'Petitioner is exempt from the payment of VAT, because PAGCOR's charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.
> >
> > Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A.

No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424, thus:

xxx xxx xxx

As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to 0% rate.'

With the above pronouncements of the Supreme Court, it becomes an exercise in futility to inquire and address lengthily the issue of whether or not PAGCOR is exempted from payment of VAT and whether the same benefit is extended to petitioner. It becomes an unarguable fact that PAGCOR is not liable to pay VAT and petitioner's transactions with PAGCOR are subject to 0% rate. Perforce, there is no legal basis for the VAT assessment issued by respondent against petitioner in the amount of P22,638,106.79 for the taxable year of 2006.

In our system of judicial administration, the Supreme Court has the last word on what the law is, and that its decisions applying or interpreting the laws or the Constitution form part of the legal system of the country, all other courts should take their bearings from the decisions of the Supreme Court. It is the duty of lower courts to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts." (Emphasis supplied)

Considering the foregoing, the Court *En Banc* deems it futile to address the arguments which are a mere rehash of the

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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

Commissioner's position in her Answer dated March 7, 2011[30] which were thoroughly discussed in the Decision dated May 31, 2013[31] of the Court in Division.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED.** Accordingly, the Decision dated May 31, 2013 and the Resolution dated August 23, 2013 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
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

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[30] *Records*, pp. 44-65.
[31] *Rollo*, p.35-37.