REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

FCF MINERALS CORPORATION, Petitioner,	**CTA EB NO. 2558** (CTA Case No. 8789)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF CUSTOMS, Respondent.	Promulgated: FEB 19 2024 4:20pm

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RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court *En Banc*'s resolution is petitioner FCF Minerals Corporation's (**petitioner**'s) "Motion for Reconsideration"[1] (**MR**) filed on 27 September 2023, with respondent Commissioner of Customs' (**respondent**'s) "Comment (On Petitioner's Motion for Reconsideration)"[2] (**Comment**) filed *via* registered mail on 04 October 2023.[3]

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[1] *Rollo*, pp. 2142-2146.
[2] Id., pp. 2148-2152.
[3] Received on 09 October 2023.

Petitioner seeks the reversal of the Court *En Banc*'s Decision dated 04 September 2023[4] (**assailed Decision**). The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review filed by petitioner FCF Minerals Corporation on 10 January 2022 is hereby **DENIED** for lack of merit. Consequently, the assailed Amended Decision dated 15 March 2021 and assailed Resolution dated 20 October 2021 of the Third Division, in CTA Case No. 8789, entitled *FCF Minerals Corporation v. Commissioner of Customs*, are hereby **AFFIRMED.**
>
> **SO ORDERED.**
>
> ...

In arriving at the foregoing conclusion, the Court *En Banc* agreed with the Third Division's findings that petitioner was not entitled to the Value-Added Tax (**VAT**) refund. This is mainly because of petitioner's non-compliance with paragraph 13.2(j), Section XIII of the Financial or Technical Assistance Agreement[5] (**FTAA**); particularly, the requirement of proving that no equipment of comparable price and quality as that

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[4] *Rollo*, pp. 2118-2136.

[5]

SECTION XIII
RIGHTS AND OBLIGATIONS OF THE PARTIES

13.2 Rights of the Contractor. The Contractor shall have the following rights:

...

j. Subject to existing laws, rules and regulations, the Contractor shall have the right to import into the Philippines all equipment, machinery and spare parts required by Contractor for Mining Operations, and to export the same when no longer needed for Mining Operations: *Provided*, **That machinery, equipment and spare parts of comparable price and quality are not manufactured domestically, are actually needed and will be used exclusively by the Contractor in its Mining Operations, and are covered by shipping documents in the name of the Contractor to whom the shipment will be delivered direct by the customs authorities.**

From the date of approval of the Declaration of Mining Project Feasibility until the end of Recovery Period and/or within a period of five (5) years from the date of acquisition of such machinery, equipment and spare parts, the Contractor may not sell, transfer, or dispose of such machinery, equipment and spare parts within the Philippines without the prior approval of the Director and payment of any taxes due the Government that were previously exempted: *Provided*, That should the Contractor sell, transfer or dispose of such machinery, equipment and spare parts within the Philippines without the prior consent of the Director within the prescribed period, it shall pay twice the amount of the tax exemption granted: *Provided further*, That the Director may allow the sale, transfer, or disposition of the said items within the Philippines within the prescribed period without payment of previously granted tax and duty exemptions under terms and conditions to be formulated by the Bureau: *Provided finally*, That any sale, transfer or disposition made after the prescribed period shall not require prior approval of the Director but notice thereof shall be made within ten (10) days from the sale, transfer or disposition thereof. (Emphasis supplied)

...

imported are available locally which would otherwise make such importation exempt from VAT and customs duties.

In the assailed Decision, We held:

...

From the foregoing, the Third Division correctly enumerated the requisites before the imported capital equipment could be exempt from VAT and customs fees:

1. The importation of the capital equipment should have taken place during or before the Recovery Period;

2. The capital equipment is not available domestically in comparable price and quality;

3. The capital equipment is actually needed and will be used exclusively by the FTAA Contractor in its Mining Operations;

4. The importation of capital equipment should be covered by shipping documents in the name of the FTAA Contractor to whom the shipment will be delivered directly by the customs authorities; and,

5. The capital equipment was not sold, transferred or disposed from the date of approval of the Declaration of Mining Project Feasibility until the end of Recovery Period and/or within a period of five (5) years from the date of acquisition of such capital equipment, subject to exceptions under the FTAA.

While it is true that the aforementioned provisions do not explicitly provide that non-compliance therewith would disallow the contractor from availing of the VAT and customs fees exemptions, respondent is correct in his or her observation that such compliance is inherently confined by its right to import such capital equipment pursuant to the FTAA provisions.

To elaborate, herein petitioner, as contractor, has the right to import the subject capital equipment subject to the conditions set forth in the said provision. Conversely, petitioner has no right to import capital equipment (under the FTAA provisions) if all of the aforementioned requisites are not complied with. Tersely put, petitioner has no right and thus cannot avail itself of the benefits provided in the FTAA if at least one of the aforementioned requisites is not complied with.

> Verily, there is no merit in petitioner's contention that its non-compliance with the paragraph 13.2(j), Section XIII of the FTAA should not result into disallowance of its VAT and customs fees exemption.
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> ...

In its MR, petitioner merely wants the Court *En Banc* to focus on the purpose for which the Section 2 of Republic Act (**RA**) No. 7942 or the Philippine Mining Act of 1995 was enacted. The said provision states:

> ...
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> SEC. 2. *Declaration of Policy.* — All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities.
>
> ...

According to petitioner, the denial of its claim refund runs counter against the very objective of the State's objectives of promoting and developing mining activities for the purpose of national growth.

Respondent debunks petitioner's claim and contends that it has never raised any issue on this matter before. Respondent insists that petitioner's argument could still not negate the fact that claims for tax refund must be strictly construed against the taxpayer.

We resolve.

We find no merit in petitioner's argument. It cannot be stressed enough that the objective of a law in itself cannot be the sole basis of this Court for it to grant relief to petitioner. There are other facets or issues in this case that must be considered, such as: (1) the parties' obligations under the FTAA; (2) the limits of petitioner's right to a refund of its taxes; and, (3) the provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended, as well as the State's inherent power of tax among other things.

In the Court *En Banc*'s determination of entitlement to a VAT refund, under the provisions of the FTAA, RA No. 7942, and the NIRC of 1997, as amended, are construed strictly against it. This austere view of treating tax refunds in the same manner as tax exemptions is not novel as such principle has not only been consistently applied by this Court but by the Supreme Court as well. Thus, in the assailed Decision, the Court *En Banc*, citing the Supreme Court's ruling in *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*[6] stated:

> ...
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> ...Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed. ...
>
> ...

To be sure, the present MR[7] is not *pro forma* just because it raises forgone contentions. However, such an instance usually calls for the Court *En Banc* to deal with the same summarily, following the Supreme Court's ruling in the case of *Ortigas and Company Limited Partnership v. Judge Tirso Velasco and Dolores V. Molina*[8] (**Ortigas**). In the said case, the Supreme Court declared:

> ...
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> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; **and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity.** It suffices for the Court to deal generally and summarily with the motion for reconsideration, and

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6 G.R. No. 222428, 19 February 2018; Citations omitted and italics in the original text.
7 Supra at note 1.
8 G.R. No. 109645, 04 March 1996; Emphasis supplied.

> merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
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> ...

Finding thus no cogent reason to abandon or modify the assailed Decision, the Court *En Banc* is inclined to deny the instant motion.

WHEREFORE, the foregoing premises considered, petitioner's "Motion for Reconsideration" filed on 27 September 2023 is hereby **DENIED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice