REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

UNISYS PUBLIC SECTOR SERVICES CORPORATION,
Respondent.

CTA EB No. 1429
(CTA Case No. 8293)

Present:

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

Promulgated:
JAN 03 2017 4:10 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of the Court *En Banc* is the Commissioner of Internal Revenue's (CIR) **Motion for Reconsideration** filed on September 26, 2016, with Unisys Public Sector Services Corporation's (Unisys) **Comment/Opposition** *(to the Motion for Reconsideration filed by the Commissioner of Internal Revenue)* filed on November 11, 2016.

The CIR's Motion seeks reconsideration of the Decision of the Court *En Banc* promulgated on September 9, 2016,[1] (the "assailed Decision") affirming the judgment of the Third Division of this Court ("Court in

[1] Court *En Banc*'s Docket, pp. 167-183.

Division") in CTA Case No. 8293. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the present Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

The CIR moves for reconsideration of the assailed Decision on the ground that:

> "THE HONORABLE COURT ERRED IN RULING THAT RESPONDENT WAS ABLE TO SUBSTANTIATE ITS CLAIM IN THE REDUCED AMOUNT OF P51,187,799.96."[2]

On the other hand, Unisys, in its Comment/Opposition, submits that the CIR did not raise any new arguments in its Motion for Reconsideration.[3] Instead, he simply reiterated the following arguments which were fully threshed out by this Court in the assailed Decision, to wit:

a. Respondent has no legal personality to file a claim for refund;

b. There was no erroneous payment of value-added tax ("VAT"); and

c. Respondent failed to establish its right to refund.[4]

Accordingly, Unisys manifested that it is adopting the arguments it previously raised in its Comment to the Petition for Review.[5]

The Court *En Banc* resolves to deny CIR's Motion for Reconsideration for lack of merit.

A careful review of the case records and the arguments raised by the CIR in his Motion for Reconsideration reveals that the arguments relied upon are, indeed, mere reiterations of the matters which have already been thoroughly discussed and passed upon by the Court *En Banc* in the assailed Decision. The CIR failed to raise any new or substantial matter or any

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[2] *Id.*, p. 188.
[3] *Id.*, p. 203.
[4] *Id.*
[5] *Id.*

compelling reason that will justify reversal or even modification of the Court *En Banc*'s findings. Nevertheless, the Court *En Banc* shall state below a few points, if only to reinforce its discussion in the assailed Decision.

By way of reiteration, the Court *En Banc* holds that CIR's claim that Unisys has no legal personality to file the present claim for refund lacks basis. As plainly stated in the assailed Decision, the CIR failed to present any evidence to prove such allegation. Considering that the CIR essentially anchors his claim on the purported Assignment and Assumption Agreement allegedly executed on March 6, 2008 by and between Unisys and Unisys Australia Ltd. (UAL), he ought to have presented such document. As the CIR failed to do so, he should then suffer the consequence. This Court cannot decide on the basis of mere allegations.

As regards the CIR's contention that the 7% standard input tax is only a standard, which is "simply the limit by which actual input tax is compared to determine if it exceeds, or if it is below the standard of 7% of gross sales to government",[6] this Court stands by its ruling that the 7% standard input tax is the allowable input tax on sale of goods and/or services to the government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations. The said 7% standard input tax is in lieu of the actual input tax of the seller directly attributable or ratably apportioned to such sales. For emphasis, the relevant portion of the assailed Decision is quoted below:

> "The rule is clear and needs no interpretation. The 7% standard input tax is the allowable input tax on sale of goods and/or services to the government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs). The same is in lieu of the actual input tax of the seller directly attributable or ratably apportioned to such sales.
>
> However, the amount of the standard input tax cannot be directly reported as allowable deduction on the VAT return as only the amount of the actual input tax may be reflected therein. As such, the difference between the standard input tax and the actual input tax shall be closed to the taxpayer's cost or expense which is also reported in the VAT return. In so doing, the whole amount of the standard input tax is incorporated in the computation of the VAT due or overpayment per VAT return.

[6] *Id.*, p. 189.

In the present case, the Court in Division correctly found that Unisys used its actual accumulated input VAT in computing its VAT payable for the relevant period subject of the present claim for refund in its original VAT returns. Unisys failed to take into account the 7% standard input tax as provided under Section 4.114-2 (a) of Revenue Regulations (RR) No. 16-05, as amended. The Court in Division likewise found that the actual accumulated input VAT attributable to its sales to NSO and which was used by Unisys in computing its VAT payable is lower than the 7% standard input tax. Accordingly, the Court in Division found that Unisys erroneously made a VAT overpayment albeit in the reduced amount of ₱51,187,799.96 considering that Unisys failed to substantiate some of its reported input VAT."

WHEREFORE, finding no reversible error in the assailed Decision to warrant reconsideration thereof, CIR's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
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

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Took No Part)
CATHERINE T. MANAHAN
Associate Justice