REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

CBK POWER COMPANY LIMITED,	**CTA CASE NOS. 8246 & 8302**
Petitioner,	Members:
	Bautista, *Chairperson*
-versus-	***Fabon-Victorino,*** *and*
	Ringpis-Liban, JJ.
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	FEB 15 2017 10:26 a.m.

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R E S O L U T I O N

For resolution is petitioner's Motion to Withdraw Amended Petition for Review (docketed as CTA Case No. 8302), with annexes, filed on September 17, 2015.

On March 30, 2011 and June 28, 2011, petitioner filed Petitions for Review[1] docketed respectively as CTA Case Nos. 8246 and 8302, praying that judgment be rendered ordering respondent to issue tax credit certificates ("TCCs") in the amounts of Php17,784,968.91 and Php31,680,290.87 representing unutilized input taxes attributable to zero-rated sales for the period January 1, 2009 to March 31, 2009 and April 1, 2009 to June 30, 2009.

On October 14, 2011, the Court ordered the consolidation of CTA Case No. 8302 with CTA Case No. 8246.[2]

On December 23, 2011, the Court allowed petitioner to present its evidence *ex-parte* for failure of respondent to appear during pre-trial for the second consecutive time.[3]

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[1] *Records, CTA Case No. 8246, Vol. 1, Petition for Review,* pp. 1-49, with annexes; *Records, CTA Case No. 8302, Petition for Review,* pp. 1-44, with annexes.

[2] *Id., CTA Case No. 8302,* pp. 81-82.

[3] *Id., CTA Case No. 8246, Vol. 1,* p. 127.

On January 6, 2012, petitioner filed a Motion to Lift Order of Default[4], which was denied[5] by this Court on April 19, 2012. Respondent filed its Motion for Reconsideration[6] on April 27, 2012, which was likewise denied[7] on June 13, 2012.

Thereafter, respondent filed a Petition for *Certiorari* with the Supreme Court docketed as G.R. Nos. 203054-55, seeking to nullify this Court's Resolutions dated December 23, 2011, April 19, 2012 and June 13, 2012.

On May 2, 2013, this Court granted[8] petitioner's Motion for Leave of Court to File Attached Amended Petition for Review for CTA Case No. 8302[9]. In the Amended Petition for Review[10], petitioner prayed for the issuance of a TCC in the amount of Php5,781,915.24 representing unutilized input taxes on its importations of goods other than capital goods for the period April 1, 2009 to June 30, 2009.

On June 10, 2014, the Court promulgated its Decision[11] partially granting the Petition for Review and Amended Petition for Review, and ordering respondent to issue a TCC in the reduced amount of Php22,126,419.93 representing unutilized input VAT incurred in relation to zero-rated sales for the first and second quarters of 2009.

On September 8, 2014, this Court denied[12] respondent's Motion for Partial Reconsideration (Re: Decision promulgated 10 June 2014)[13] posted on July 17, 2014. Hence, respondent was constrained to appeal the case to the Court *En Banc via* Petition for Review docketed as CTA *EB* No. 1225.

On July 29, 2015, the Supreme Court promulgated a Decision granting respondent's Petition for *Certiorari*; setting aside this Court's Resolutions dated December 23, 2011, April 19, 2012 and June 13, 2012; and remanding the case to this Court to give respondent the chance to present evidence, rebuttal and sur rebuttal, if needed.

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[4] *Records, CTA Case No. 8246, Vol. 1,* pp. 133-137.
[5] *Id., Vol. 2,* pp. 576-577.
[6] *Id.* at 578-582.
[7] *Id.* at 587-588.
[8] *Id.* at 1763-1765.
[9] *Id., Vol. 3,* pp. 1506-1516.
[10] *Records, CTA Case No. 8246, Vol. 3,* pp. 1551-1571.
[11] *Id.* at 1816-1840.
[12] *Id.* at 1882-1883.
[13] *Id.* at 1857-1869.

In its Motion to Withdraw filed on September 17, 2015, petitioner avers, among others, that it received a letter from respondent recommending the issuance of TCCs in the total amount of Php127,025,705.15, with Php86,070,860.67 and Php40,954,844.48 pertaining to the BIR's and to the Bureau of Customs' ("BOC") respective portions; that respondent will release the authority for the BOC to issue the refund to petitioner; that, consequently, petitioner filed its Amended Petition for Review for CTA Case No. 8302; that the Court issued a Decision partially granting its Petitions for Review, and ordering respondent to issue a TCC in the reduced amount of Php22,126,419.93; that after this Court denied respondent's Motion for Partial Reconsideration, respondent elevated the case to the Court *En Banc;* that on July 27, 2015, the BOC issued a TCC in the amount of Php40,808,627.00 for April 1, 2009 to December 31, 2009, including the Php5,781,915.24 in CTA Case No. 8302; that the Court *En Banc* has yet to issue a decision in CTA *EB* No. 1225; and that it prays that it be allowed to withdraw its Amended Petition for Review in CTA Case No. 8302.

Attached to petitioner's Motion to Withdraw are the following: *(1)* TCC issued by the BOC in the amount of Php40,808,627.00 representing the refund of input tax on importations of spare parts for the period April 1, 2009 to December 31, 2009 dated July 27, 2015; *(2)* Meeting of the Partnership Management Committee of CBK Power Company Limited re: Resolution No. 2015-015 authorizing its counsel to file the Motion to Withdraw dated September 14, 2015; and *(3)* Secretary's Certificate re: Resolution No. 2015-015 dated September 15, 2015.

On October 6, 2015, this Court ordered respondent to file his comment to petitioner's Motion to Withdraw within ten (10) days from receipt of the resolution. Records reveal that the same was received by the BIR-NOB-Litigation Division on October 8, 2015, hence, he had until October 19[14], 2015 to file his comment. However, as of February 6, 2017, no such comment was filed.

The Supreme Court issued an Entry of Judgement on December 15, 2015, stating that the July 29, 2015 Decision has become final and executory, and was recorded in the Book of Entries of Judgments.

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[14] October 18, 2015 fell on a Sunday.

On February 16, 2016, the Court *En Banc* issued a Resolution dismissing the Petition for Review filed by respondent and remanding the case to this Court for proper disposition.

This Court finds merit in petitioner's Motion to Withdraw.

Section 3, Rule 50 of the Revised Rules of Court provides as follows:

> RULE 50
> DISMISSAL OF APPEAL
>
> xxx xxx xxx
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> SEC. 3. *Withdrawal of appeal.* - An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court.

Considering that petitioner's Motion to Withdraw is reasonable and that respondent was given the opportunity to file his opposition, the Court finds merit in the Motion to Withdraw.

WHEREFORE, petitioner's Motion to Withdraw Amended Petition for Review (docketed as CTA Case No. 8302) is hereby **GRANTED**. Accordingly, the Amended Petition for Review for CTA Case No. 8302 is hereby considered **WITHDRAWN** and CTA Case No. 8302 is hereby considered **CLOSED** and **TERMINATED**. As for CTA Case No. 8246, let the initial presentation of evidence for respondent be set on **May 2, 2017 at 9:00 a.m.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice