

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF CTA EB CASE NO. 1225
INTERNAL REVENUE, (CTA Case No. 8246 & 8302)
Petitioner,

Present:

-versus-

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS
RINGPIS-LIBAN, JJ.

**CBK POWER COMPANY
LIMITED,**

Respondent. Promulgated:

FEB 16 2016 2:45 p.m.

X-----X

RESOLUTION

On March 30 and June 28, 2011, CBK Power Company Limited (CBK) filed cases for refund before this Court, docketed as CTA Case Nos. 8246 and 8302.

The said cases were consolidated, and due to the failure to appear on the part of Commissioner of Internal Revenue (CIR)'s counsel during the pre-trial conference, the Third Division issued a Resolution on December 23, 2011, allowing CBK to present evidence *ex parte*. CIR's Motion to Lift Order of Default was denied in another Resolution promulgated on April 19, 2012. The Motion for Reconsideration of CIR was denied *via* Resolution dated June 13, 2012.

Consequently, CIR filed a Petition for *Certiorari* before the Supreme Court, seeking to annul and set aside the said Resolutions.

However, before the Petition for *Certiorari* was decided by the Supreme Court, this Court's Third Division promulgated on June 10, 2014, its Decision, partially granting the issuance of tax certificate in favor of CBK. CIR's Motion for Partial Reconsideration was denied on September 8, 2014.

On October 13, 2014, CIR filed her Petition for Review *Ad Cautelam* before this Court En Banc, seeking the nullification of the Decision dated June 10, 2014, as well as the Resolution promulgated on September 8, 2014, by this Court's Third Division.

While the case is pending before this Court *En Banc*, the Supreme Court ruled on July 29, 2015, to set aside the Resolutions of this Court's Third Division, remanding the same cases therein to give CIR the chance to present evidence, rebuttal and sur rebuttal evidence, if needed.

Considering that the Supreme Court has ruled to set aside the order of default through the assailed Resolutions, remanding CTA Case Nos. 8246 and 8302 to this Court's Third Division, it is but proper to dismiss the present Petition *Ad Cautelam* of CIR and to await the proper disposal of CTA Case Nos. 8246 and 8302 before the Third Division.

WHEREFORE, the Petition for Review *Ad Cautelam* is hereby **DISMISSED** without prejudice. This case is hereby **REMANDED** to the Third Division for its proper disposition.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice

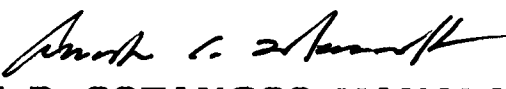

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice