

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CTA EB No. 1510
INTERNAL REVENUE, (CTA Case No. 8788)
Petitioner,

Present:

-versus-

DEL ROSARIO, PJ;
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

CE CASECNAN WATER AND
ENERGY COMPANY, INC.,
Respondent.

Promulgated:

JUN 21 2018 3:51 p.m.

X- - - - - X

RESOLUTION

Fabon-Victorino, J.:

Challenged in the instant *Motion for Partial Reconsideration* filed by petitioner Commissioner of Internal Revenue (CIR) is the Decision promulgated by this Court on November 16, 2017, the decretal portion of which reads as follows:

WHEREFORE, the Petition for Review dated September 5, 2016 filed by the Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit.

Consequently, the assailed Decision dated May 4, 2016 and Resolution dated August 16, 2016, both rendered by the Court in Division, are **AFFIRMED**.

✓

SO ORDERED. ¹

Petitioner maintains that respondent is not entitled to the refund of the alleged excess and unutilized input taxes as the right to seek refund belongs to its suppliers of goods and/or services, or the persons and/or entities from which the input taxes originated, citing *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*² to back up his position. For this reason alone, respondent's claim for refund should be dismissed outright.

Even granting that respondent is the proper party to institute this refund claim, the same may not prosper as respondent failed to comply with Revenue Memorandum Order (RMO) No. 53-98, opines petitioner. Allegedly, submission of complete supporting documents to substantiate a claim for refund at administrative level is required before the Court may intervene. Respondent's failure to submit all the documentary requirements at the BIR level effectively foreclosed his right to evaluate the merits of the refund claim. In fine, respondent was not able to exhaust available administrative remedies, consequently, its judicial recourse is premature thereby depriving the Court of competence to hear and determine the case.

In refutation, respondent counters that petitioner belatedly raised the issue of the proper party to institute the refund case precluding this Tribunal from ruling on the matter. Further, non-observance of RMO No. 53-98 is not fatal to its cause since it was able to present all the evidence to substantiate its claim for refund during the trial of the case. In other words, the Court committed no reversible error in denying respondent's petition for review.

THE RULING OF THE COURT

Petitioner's Motion for Partial Reconsideration is devoid of merit, hence, should be denied.

¹ *Rollo*, p. 122.

² G.R. No. 190506, June 13, 2016.



Indeed, respondent's personality to institute a claim for refund of its alleged excess and unutilized input taxes was never raised by petitioner at any stage of the proceeding until the present incident. He did not raise the issue of whether respondent is the proper party to ask for refund of excess or unutilized input taxes in any of his pleadings filed with the Court in Division and before the Court En Banc except in his Motion for Partial Reconsideration. Worse, he never even tried to present any evidence in his behalf and submitted the case for decision by mere manifestation in open court. Obviously, petitioner failed to consider that higher courts are precluded from taking cognizance of issues, arguments or points of law only raised for the first time in a motion for reconsideration or on appeal.³ To consider this belatedly-raised issue amounts to trampling on the basic principles of fair play, justice, and due process.⁴

But if only to put petitioner's mind to rest, let it be stressed that the *Coral Bay* case that he cited as authority is not applicable to the present case.

In *Coral Bay*, petitioner-claimant Coral Bay Nickel Corporation's principal place of business was located inside the special economic zone (ECOZONE) known as Rio Tuba Export Processing Zone. Under the Destination Principle and Cross Border Doctrine, the goods/services destined for consumption inside the ECOZONE are considered as consumption outside the Philippine Territory, therefore zero-rated.⁵

Coral Bay was found to be located inside an ECOZONE, which was deemed a foreign territory by fiction of law, thus, its purchases of goods/services consumed within the ECOZONE should be VAT-free. As such, it was not possible to shift the VAT to Coral Bay and that the tax shall be for the account of its suppliers of good/services. In the event that VAT was erroneously passed to Coral Bay by its suppliers of goods and services, the latter shall be the proper party to

³ See *Mendoza vs. Bautista, et al.*, G.R. No. 143666, March 18, 2005.

⁴ *Ali Akang vs. Municipality of Isulan, Sultan Kudarat Province*, G.R. No. 186014, June 26, 2013.

⁵ See *Commissioner of Internal Revenue vs. Placer Dome Technical Services (Phils.), Inc.*, G.R. No. 164365, June 8, 2007; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

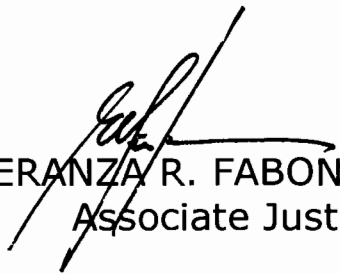
institute a refund claim and not Coral Bay Nickel Corporation.

In stark contrast with the factual setting in *Coral Bay*, respondent's principal office is located at Pantabangan, Nueva Ecija,⁶ which is neither foreign soil nor one considered by law as such. Since the purchases of goods/services by respondent were destined for consumption within the Philippine territory, it is legally feasible for its supplier of goods and/or services to pass on the VAT charged thereon to respondent. *Ergo*, the VAT imposed on respondent's purchases shall be considered as its input taxes,⁷ which in turn may be claimed by it for possible input VAT refund. Being the entity that ultimately bears the burden of the tax,⁸ respondent is the proper party to claim the same.

Anent respondent's alleged non-compliance with RMO No. 53-98 resulting in non-exhaustion of available administrative remedies, suffice it to say that this issue has long been laid to rest by cases and in fact been amply discussed and determined by this Court in the assailed Decision of November 16, 2017, specifically in pages 7-11 thereof.

WHEREFORE, the Motion for Partial Reconsideration dated December 18, 2017 filed by petitioner Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit. The challenged Decision dated November 16, 2017 is **AFFIRMED**.

SO ORDERED.


ESPERANZA R. FABON-VICTORINO
Associate Justice

⁶ Par. 2, Joint Stipulation of Facts and Issues, Division docket, p. 301; Exhibit P-1.

⁷ Input taxes are the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on among others, local purchase of goods and/or services from another VAT-registered person. See Section 110(A)(3)(b) of the National Internal Revenue Code (NIRC), as amended.

⁸ A seller who is directly and legally liable for payment of an indirect tax, such as the VAT on goods or services is not necessarily the person who ultimately bears the burden of the same tax. It is the final purchaser or consumer of such goods or services who, although not directly and legally liable for the payment thereof, ultimately bears the burden of the tax. See *Contex Corporation vs. Hon. Commissioner of Internal Revenue*, G.R. No. 151135, July 2, 2004.

We Concur:

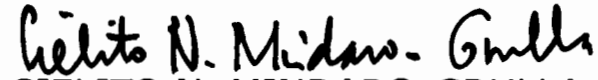

ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice