Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **December 4, 2023**, *which reads as follows:*

"G.R. No. 252083 (SAN MIGUEL ENERGY CORPORATION, Petitioner, **v. COMMISSIONER OF INTERNAL REVENUE,** Respondent). — Petitioner San Miguel Energy Corporation (SMEC) filed this Petition for Review on *Certiorari* (As Appeal Under Rule 45)[1] seeking to partially modify the Decision[2] dated February 24, 2020 of the Court of Tax Appeals *en banc* (CTA EB) in CTA EB Nos. 1906 and 1907, by granting to SMEC a refund of the amount of PHP 8,155,140.00, representing the basic deficiency Documentary Stamp Tax (DST) paid for taxable year 2010, in addition to the amount of PHP 8,456,497.05 which was ordered refunded to it.[3]

Facts

The facts as summarized by the CTA EB are as follows:

On July 19, 2011, the Court *en banc* promulgated its Decision in the case of *Commissioner of Internal Revenue v. Filinvest Dev't. Corp.*[4] (*Filinvest*), ruling that DST is imposable on instructional letters, journal and cash vouchers evidencing advances which Filinvest Development Corporation extended to its affiliates which qualify as loan agreements.[5]

Relatedly, on October 6, 2011, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) No. 48-2011, which directed all concerned employees engaged in the audit and review of tax cases to assess deficiency DST, if warranted, on transactions similar to that of *Filinvest*.[6]

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1 *Rollo*, pp. 47–102.

2 *Id.* at 11–32. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, Jean Marie A. Bacorro-Villena and Maria Rowena Modesto-San Pedro concurring while Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan with Concurring and Dissenting Opinions.

3 *Id.* at 95, Petition for Review on *Certiorari* (As Appeal Under Rule 45).

4 669 Phil. 323 (2011) [Per J. Perez, *En Banc*].

5 *Rollo*, p. 13, CTA EB Decision.

6 *Id.*

On December 16, 2013, the BIR issued a Notice of Informal Conference informing SMEC that, upon examination of SMEC's internal revenue tax liabilities for the taxable year ending December 31, 2010, SMEC had certain deficiency DST for taxable year 2010 on the advances from related parties amounting to PHP 1,631,028,000.00 as shown on the Notes to the 2010 Audited Financial Statements (AFS) of SMEC and San Miguel Corporation, a related party.[7]

On December 23, 2013, SMEC paid under protest the alleged deficiency DST in the amount of PHP 16,611,637.05, inclusive of surcharge, interest, and compromise penalty.[8]

On November 12, 2015, SMEC filed with the BIR an administrative claim for refund dated November 11, 2015, requesting for a refund or issuance of tax credit certificate in the amount of PHP 16,611,637.05, representing DST erroneously and/or illegally collected from it for taxable year 2010, pursuant to Section 229, in relation to Section 204(C) of the National Internal Revenue Code of 1997, as amended (1997 Tax Code).[9]

Due to the respondent Commissioner of Internal Revenue's (CIR) inaction, SMEC filed a judicial claim for refund with the CTA Division on December 18, 2015.[10]

During trial, only SMEC presented evidence while the CIR's counsel manifested that he would not present any evidence for the defense.[11]

CTA Division Ruling

In a Decision dated February 2, 2018, the CTA Division granted SMEC a refund only of the penalties it erroneously paid in relation to the assessed DST, the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in the aggregate amount of ₱8,456,497.05, representing the following amounts:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	**AMOUNT**
Surcharge	₱ 2,038,785.00
Interest	6,367,712.05
Compromise Penalty	50,000.00
TOTAL	**₱8,456,497.05**

7 *Id.* at 14.
8 *Id.*
9 *Id.*
10 *Id.*
11 *Id.* at 15.

SO ORDERED.[12] (Emphasis in the original)

The CTA Division ruled that the Court's ruling in *Filinvest*, as well as, RMC No. 48-2011, which merely implements *Filinvest*, may be applied retroactively in the absence of any previous or old doctrine on the matter laid down by the Court. It further held that DST is imposable even without any debt instrument evidencing the transaction or even if it was not identified by the BIR, provided that the transaction was clearly established following Section 6 of Revenue Regulations No. 9-94.[13]

The CTA Division, however, found that SMEC cannot be held liable for surcharges and interest on account of its good faith reliance on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008, which states that intercompany loans and advances covered by inter-office memoranda are not subject to DST. The CTA Division further held that SMEC is also not subject to compromise penalty considering that no agreement was reached between the parties in view of the protest filed by SMEC against the BIR's deficiency tax assessment.[14]

Both SMEC and CIR moved for reconsideration of the CTA Division Decision; but their motions were denied by the CTA Division in its Resolution dated July 24, 2018.[15]

Two petitions for review were separately filed by SMEC and CIR with the CTA EB, docketed as CTA EB No. 1906 and CTA EB No. 1907, respectively.[16] Both cases were eventually consolidated.[17] SMEC primarily assailed the retroactive application of the Court's ruling in *Filinvest* and asserted that DST may not be imposed on cash advances, more so, when the same is not contained in a debt instrument or loan document.[18] The CIR, on the other hand, questioned the CTA Division's exercise of jurisdiction over the petition considering that the assessment had become final and unappealable. Further, the CIR assailed the CTA Division's cancellation of surcharges, interest, and compromise penalty imposed upon SMEC.[19]

CTA EB Ruling

In the assailed Decision, the CTA EB affirmed the Decision of the CTA Division. It emphasized that the Court's ruling in *Filinvest*, which merely interpreted provisions of the 1997 Tax Code and did not overrule a precedent or doctrine, was applicable to SMEC's case.[20] The CTA EB also noted that

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12 *Id.* at 12.
13 *Id.* at 15.
14 *Id.* at 29–31.
15 *Id.*
16 *Id.*
17 *Id.* at 16.
18 *See id.* at 17–18.
19 *Id.* at 18–19.
20 *Id.* at 20–21.

SMEC cannot rely on decisions of the CTA nor on minute resolutions issued by the Court, as these are not binding precedents and do not contain doctrinal value.[21]

Further, the CTA EB explained that DST is an excise tax imposed on the transaction rather than on the document; hence, even while no document or debt instrument is shown, considering that SMEC never denied the existence of the subject transaction as indicated in its financial statements and notes thereto, the BIR's imposition of DST on the subject transaction must be upheld.[22]

As regards the CIR's petition, the CTA EB found the same a mere rehash of the arguments already addressed and discussed in the Decision of the CTA Division.[23] The CTA EB, nonetheless, reiterated that: (1) the CTA Division has jurisdiction over the instant petition as this case involves a claim for refund of erroneously and/or illegal collected internal revenue tax; and (2) good faith and honest belief that the transaction is not subject to DST justifies the deletion of surcharges and interest imposed upon SMEC; and (3) in the absence of any agreement between the CIR and SMEC, there is no basis for the imposition of compromise penalty.[24]

Unsatisfied, SMEC filed the instant petition.

SMEC insists that the Court's ruling in *Filinvest* cannot be used as basis for imposition of DST on the subject transaction made prior to its promulgation for the following reasons: (1) the transaction subject of this case does not fall squarely with the case of *Filinvest*,[25] (2) to apply *Filinvest* is violative of the doctrine of prospectivity of judicial decisions,[26] and (3) it will prejudice SMEC, who relied in good faith on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008, which declared that inter-company loans and advances covered by inter-office memoranda are not subject to DST.[27] SMEC further claims that *Filinvest* applies prospectively because it overturned a previous doctrine of the Court in the case of *Commissioner of Internal Revenue v. APC Group, Inc.*[28] (*APC Group, Inc.*) and several rulings decided by the Court of Appeals (CA) and CTA.[29]

The CIR, on the other hand, argues that SMEC has not sufficiently established its entitlement to the claimed refund. Section 180 (now Section 179) of the 1997 Tax Code and the case of *Filinvest* provide sufficient legal bases for the imposition of DST on SMEC's advances.[30] The CIR explains

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21 *Id.* at 22–24.
22 *Id.* at 26.
23 *Id.* at 27–28.
24 *Id.* at 28–31.
25 *Id.* at 82–87, Petition for Review on *Certiorari* (As Appeal Under Rule 45).
26 *Id.* at 67.
27 *Id.* at 73–74.
28 G.R. No. 162185 dated May 17, 2004. *See id.* at 146–147, Minute Resolution.
29 *Rollo*, pp. 67–72, Petition for Review on *Certiorari* (As Appeal Under Rule 45).
30 *Id.* at 183-185, CIR's Comment dated June 9, 2021.

that the Court's ruling in *Filinvest* did not reverse an old doctrine or adopted a new one; thus, it retroacts as to the date when the law was enacted.[31] Further, the CIR claims that SMEC is in error to have relied on the cited CA and CTA cases, BIR ruling, and the Court's minute resolution because these are not precedents and do not bind SMEC not being party to any of these cases.[32] Finally, CIR asserts that the imposition of interest, surcharge, and compromise penalty has factual and legal bases. SMEC cannot invoke good faith as an excuse from the payment of these penalties.[33]

Issue

Whether SMEC is entitled to the refund in the amount of PHP 8,155,140.00, representing basic deficiency DST paid for taxable year 2010.

The Court's Ruling

The Court denies the petition.

DST is imposable on advances extended to SMEC by its affiliates even in the absence of a debt instrument or formal loan document

SMEC was assessed for deficiency DST for its advances made from related parties in 2010. The deficiency DST was based on the Notes attached to the 2010 AFS of SMEC and San Miguel Corporation, a related party. SMEC paid under protest the assessed DST in the amount of PHP 16,611,637.05, inclusive of surcharge, interest, and compromise penalty. Thereafter, SMEC filed a claim for refund of the amount paid asserting its entitlement of the entire amount paid on protest on the ground that no DST is imposable on the subject transaction because there is no debt instrument or loan document evidencing the same.

SMEC is in error to insist that DST cannot be imposed on the advances extended by its affiliates in the absence of a formal debt instrument or loan document. As discussed, this issue raised by SMEC is not novel. The Court *en banc*, in *Filinvest*, affirmed the BIR's imposition of DST on the advances extended by a company to its affiliates which were indicated on mere instructional letters, journal, and cash vouchers. The Court said that these instructional letters, journal, and cash vouchers, evidencing intercompany advances fall within the meaning of loan agreements upon which DST may be imposed, to wit:

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31 *Id.* at 187.
32 *Id.* at 187–189.
33 *Id.* at 194–196.

On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are concerned, Section 180 of the NIRC provides [as] follows:

> Sec. 180. **Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.** — *On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bill of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit or note:* **Provided**, *That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax:* **Provided however**, *That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000.00) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of documentary stamp tax provided under this Section.*

When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to "(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines." Correlatively, Section 3 (b) and Section 6 of Revenue Regulations No. 9-94 provide as follows:

> Section 3. Definition of Terms. — For purposes of these Regulations, the following term shall mean:
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> (b) 'Loan agreement' — refers to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings.
>
> The terms 'Loan Agreement" under Section 180 and "Mortgage' under Section 195, both of the Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section

> 180, while a deed of mortgage shall be taxed under Section 195."
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> "Section 6. Stamp on all Loan Agreements. — All loan agreements whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines shall be subject to the documentary stamp tax of thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.
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> ***In cases where no formal agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code.***
>
> Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed.[34] (Emphasis supplied, citation omitted)

Succinctly, *Filinvest* signifies that regardless of the nature of the document, DST is imposable as long as a loan agreement is clearly established.

To be sure, *Filinvest* only acknowledged previous ruling of the Court on the nature of a DST. In a string of cases, the Court has been consistent in its ruling that DST is not limited to the document embodying the enumerated transaction.[35] By nature, DST is an excise tax on **the exercise of a right or privilege to transfer obligations, rights or properties incident thereto.**[36] It is an excise tax because **it is imposed on the transaction rather than on the document.**[37] Hence, in determining the propriety of the imposition of the DST, "the Court considers not only the document but also the nature and character of the transaction."[38] Undoubtedly, a loan agreement is among the transactions subject to DST under the 1997 Tax Code.[39]

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34 *Commissioner of Internal Revenue v. Filinvest Dev't. Corp., supra* note 4, at 355–357.

35 *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, 522 Phil. 693, 698 (2006) [Per J. Ynares-Santiago, First Division].

36 *Id.* at 698.

37 *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.*, 607 Phil. 227, 240 (2009) [Per J. Carpio, First Division]; *Philippine Banking Corp. v. Commissioner of Internal Revenue*, 597 Phil. 363, 381 (2009) [Per J. Carpio, First Division]; *See Jaka Investments Corp. v. Commissioner of Internal Revenue*, 640 Phil. 77 (2010) [Per J. Leonardo-De Castro, First Division].

38 *Philippine Banking Corp. v. Commissioner of Internal Revenue, id.* at 382.

39 *See* sec. 173 in relation to sec. 179 of the 1997 NIRC, as amended by Republic Act No. 9243.

Further, Section 179 (formerly Section 180) of the 1997 Tax Code, as amended by Republic Act No. 9243,[40] the law applicable to this case, states:

> SECTION 5. Section 180 of the National Internal Revenue Code of 1997, as amended, is hereby renumbered as Section 179 and further amended to read as follows:
>
> "SEC. 179. *Stamp Tax on All Debt Instruments.* — On every original issue of debt instruments, there shall be collected a documentary stamp tax on One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: *Provided*, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
>
> For purposes of this section, *the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to* debentures, certificates of indebtedness, due bills, bonds, *loan agreements,* including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government of any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation." (Emphasis supplied)

Proceeding from the foregoing, the Court finds no reason to reverse the CTA EB's ruling that SMEC is not entitled to a refund of the DST paid in 2010. Indeed, the existence of the taxable transaction in this case is undisputed. As noted by the CTA EB, SMEC did not deny or refute the advances it obtained from affiliates in 2010. Following *Filinvest*, these advances duly established in the 2010 AFS and the Notes appended thereto qualify as loan agreements subject to DST.

Retroactivity of the Court's ruling in Filinvest

The Court likewise sees no error in applying *Filinvest* in this case.

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[40] An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, As Amended, and For Other Purposes, approved on February 17, 2004.

As a consequence of the Court's function of interpreting and applying the law, decisions rendered by the Court are generally retroactive in application. It was explained in *Senarillos v. Hermosisima*,[41] that the interpretation placed by the Court upon a statute forms part of the law as of the date the law was originally passed, since it merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[42] Thus, when the Court decides a case, it does not pass a new law, but merely interprets and applies a preexisting one.[43]

The Court's interpretation of Section 173 in relation to Section 180 (now Section 179) of the 1997 Tax Code in *Filinvest* became part of the 1997 Tax Code as of the date it was originally enacted. No new law was imposed nor a new tax enacted. The Court merely construed and applied existing provisions of the 1997 Tax Code to the facts of that case. Consequently, even if the deficiency DST assessment in this case was issued prior to the promulgation of *Filinvest*, the pronouncement of the Court therein is *apropos* because the present case requires the interpretation and application of the same provisions of the 1997 Tax Code.

It is also relevant to underscore the doctrine *of stare decisis et non quieta movere* that "when this Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same."[44] This doctrine is grounded on the necessity for securing certainty and stability of judicial decisions.[45] Absent any compelling reason to reverse or abandon a doctrine, the Court's sole duty is to apply existing jurisprudence.

SMEC argues, however, that *Filinvest* cannot be applied retroactively because it overturned an old doctrine and adopted a new one.[46] According to SMEC, prior to *Filinvest* the prevailing doctrine was that DST is not imposable on intercompany cash advances.[47] In support of this contention, SMEC refers to the following: (1) Minute Resolution of the Court in *APC Group, Inc.*; (2) Decision[48] of the CA in *APC Group, Inc.*; (3) Decision of the CTA in *Commissioner of Internal Revenue v. Belle Corporation*, CTA EB No. 147 dated October 13, 2006; and (4) BIR Ruling [DA (C-035) 127-08] dated August 8, 2008. SMEC explains that these constitute the previous doctrine that was overruled by *Filinvest.*[49]

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41 100 Phil. 501 (1956) [Per J. Reyes, J.B.L., *En Banc*].

42 *Id.* at 504, cited in *Victorias Milling Co., Inc. v. Intermediate Appellate Court*, 277 Phil. 1, 9 (1991) [Per J. Davide, Jr., Third Division].

43 *Accenture, Inc. v. Commissioner of Internal Revenue*, 690 Phil. 679, 693 (2012) [Per J. Sereno, Second Division].

44 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, 747 Phil. 216, 260 (2014) [Per J. Leonardo-De Castro, First Division]. Citation omitted.

45 *Lazatin v. Hon. Desierto*, 606 Phil. 271, 282 (2009) [Per J. Peralta, Third Division].

46 *Rollo*, p. 67, Petition for Review on *Certiorari* (As Appeal Under Rule 45).

47 *Id.*

48 CA-G.R. No. 69869 dated November 29, 2002.

49 *Rollo*, p. 68, Petition for Review on *Certiorari* (As Appeal Under Rule 45).

SMEC is grasping at straws.

In *Columbia Pictures, Inc. v. CA*,[50] the Court clarified that while judicial interpretation becomes part of the law as of the date of its enactment, it is subject to only one exception, that is, when a doctrine of the Court is overruled or reversed and a different view is adopted. In such a case, the new doctrine is applied prospectively and parties who relied on the old doctrine and acted in good faith are exempted.[51]

This exception does not apply here because no previous or old doctrine was overturned and a different view adopted with the promulgation of *Filinvest.* As elucidated, *Filinvest* only underlined the long-standing ruling of the Court about the nature of DST as primarily an excise tax on the privilege to engage in the covered transaction and not on the nature of the document *per se.*

Furthermore, decisions of the CA and CTA, as well as, rulings from the BIR are not legal doctrines and have no jurisprudential value.

In *Commissioner of Internal Revenue v. San Roque Power Corp.*,[52] it was emphasized that "[o]nly decisions of this Court constitute binding precedents, forming part of the Philippine legal system."[53] Rulings of lower courts bind only the parties to a specific case, while decisions of the Court are universal in scope and application, and equally mandatory in character.[54]

SMEC also cannot utilize BIR rulings not issued in its favor. A tax ruling is the official position of the BIR on an inquiry of a taxpayer to specific set of facts and law. It is binding only upon the taxpayer who sought the same.[55] Notably, here, there is no showing that SMEC sought a ruling from the BIR in relation to the DST exemption of the subject transaction.

As regards the Court's Minute Resolution in *APC Group, Inc.*, the following pronouncement in *Phil. Health Care Providers, Inc. v. Commissioner of Internal Revenue*,[56] is controlling:

> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become

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50 329 Phil. 875 (1996) [Per J. Regalado, *En Banc*].
51 *Id.* at 908.
52 703 Phil. 310 (2013) [Per J. Carpio, *En Banc*].
53 *Id.* at 382. Citations omitted.
54 *Id.*, citing *The Philippine Veterans Affairs Office v. Segundo*, 247 Phil. 330, 336 (1988) [Per J. Sarmiento, Second Division].
55 *In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012*, 868 Phil. 517, 546 (2020) [Per J. Lazaro-Javier, First Division].
56 616 Phil. 387 (2009) [Per J. Corona, Special First Division].

final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?

> ***With respect to the same subject matter and the same issues concerning the same parties, it constitutes res judicata. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent.*** Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* **involving the same parties and the same issues**, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that **the previous case "ha(d) no bearing"** on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.
>
> Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. ***Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.***[57] (Emphasis supplied, citations omitted)

Correspondingly, even if the CA's ruling in *APC Group, Inc.* was affirmed by the Court on appeal, such does not give rise to a precedent binding upon the Court in resolving this case or similar ones. The Court's ruling in *APC Group, Inc.* was issued through a minute resolution, which binds only the parties therein; and SMEC, clearly, is not party to the said case.

Surcharges, interest, and compromise penalty

As regards surcharges and interest, the Court agrees with the CIR that SMEC is not entitled to a refund of the same.

As discussed, good faith cannot be attributed to SMEC when it relied on lower court decisions and rulings issued in favor of other taxpayers. It cannot also feign ignorance on what the law explicitly provides. The imposition of surcharges and interest are mandated under the 1997 Tax Code. Section 248(A)[58] of the 1997 Tax Code provides for the imposition of 25%

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[57] *Id.* at 420–422.

[58] "SECTION 248. *Civil Penalties.*—

"(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty five percent (25%) of the amount due, in the following cases:

surcharge when there is a delay in the payment of tax as required by law. Section 249,[59] on the other hand, imposes interest of 20% per annum on failure to pay assessed deficiency taxes on the date prescribed for payment.

Here, it is undisputed that SMEC did not pay the DST on the advances extended by its affiliates and file the appropriate return for 2010 as prescribed by law and that SMEC was subsequently assessed for deficiency DST, surcharges, and interest.

On the other hand, the CTA EB correctly held that SMEC is not liable for compromise penalty of PHP 50,000.00 because a compromise, by its nature, is mutual in essence.[60] In *Wonder Mechanical Engineering Corp. v. CTA*,[61] the Court explained that "*compromise penalty cannot be imposed or collected without the agreement and conformity of the taxpayer*[.]"[62] SMEC's payment under protest of the BIR's deficiency DST assessment indicates that no agreement was reached between the parties.

In light of the foregoing discussion, the Court denies the petition and affirms the assailed CTA EB's Decision with modifications.

FOR THESE REASONS, the instant Petition for Review on *Certiorari* is **DENIED**. The Decision dated February 24, 2020 of the Court of Tax Appeals *en banc* in CTA EB Nos. 1906 and 1907 is **MODIFIED** in that

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"(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

"(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

"(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

"(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

59 "SECTION 249. *Interest.*—

"(A) *In General.*—There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

"(B) *Deficiency Interest.*— Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

"(C) *Delinquency Interest.* — In case of failure to pay:

"(1) The amount of the tax due on any return required to be filed, or

"(2) The amount of the tax due for which no return is required, or

"(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

"(D) *Interest on Extended Payment.*— If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid.

60 *See Vda. de San Agustin v. Commissioner of Internal Revenue*, 417 Phil. 292, 302 (2001) [Per J. Vitug, Third Division].

61 159-A Phil. 808 (1975) [Per J. Esguerra, First Division].

62 *Id.* at 812. Emphasis in the original, citations omitted.

respondent Commissioner of Internal Revenue is ordered to refund or issue a tax credit certificate in favor of petitioner San Miguel Energy Corporation in the reduced amount of PHP 50,000.00, representing the compromise penalty.

SO ORDERED." *(Dimaampao, J., on official leave.)*

By authority of the Court:

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
2/8/24

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