REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

CITY TREASURER OF MANILA,
Petitioner,

-versus-

CHINA BANKING CORPORATION, and the Hon. PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 23, MANILA,
Respondents.

CTA EB CASE NO. 434
(RTC SCA NO. 04-111014)
(MTC CIVIL CASE NOS. 175169CV, 175172CV, 175177CV and 175178CV

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
AUG 0 6 2009

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DECISION

Casanova, J:

This is an appeal to the Court of Tax Appeals *En Banc* by way of a verified Petition for Review[1] filed by the petitioner-City Treasurer of Manila (CITY TREASURER), under Section 7 (a)(3) of Republic Act No. 9282, otherwise known as "An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA)" assailing the following Orders:

[1] CTA En Banc Rollo, pp. 4-10.

1. The AUGUST 4, 2008 ORDER[2] issued by the Regional Trial Court, Branch 19, Manila (RTC 19), which dismissed the Special Civil Action No. 04-111014 entitled, *"Liberty M. Toledo, in her official capacity as City Treasurer of Manila, petitioner vs. CHINA BANKING CORPORATION and the HON. PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 23, MANILA, respondents"*, for lack of merit;

2. The SEPTEMBER 25, 2008 ORDER[3] of RTC 19 which denied the Motion for Reconsideration of the CITY TREASURER; and

3. The JULY 26, 2004 JOINT ORDER[4] promulgated by the Metropolitan Trial Court Branch 23, Manila (MTC 23), which denied the motion filed by CITY TREASURER to dismiss the four civil cases filed by respondent-China Banking Corporation (CHINA BANK) seeking for refund of taxes paid by the latter.

The facts of the case, as culled from the records, are as follows:

Petitioner-Erlinda Marteja/CITY TREASURER is of legal age, Filipino and currently In-Charge of Office-City Treasurer of Manila with office address at City Treasurer's Office, City Hall, Manila.

Respondent-CHINA BANK is a universal banking corporation organized and operating under existing Philippine laws, with principal office at 8745 Paseo de Roxas corner Villar Street, Makati City. On the other hand, respondent-Hon. Presiding Judge of MTC 23 (PUBLIC RESPONDENT, for brevity), is being impleaded as Nominal Party, with office address at GSIS Annex Building, Concepcion Street, Manila, where they could be served with summons and other court's processes.

CHINA BANK filed with the MTC Civil Case Nos. 175169 CV, 175172 CV, 175177 CV, and 175178 CV for refund of taxes it paid under protest in January 2003.

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[2] Annex "A", Petition for Review, CTA En Banc Rollo, pp. 14-19.
[3] Annex "B", Petition for Review, CTA En Banc Rollo, p. 20.
[4] Sub-Annex "D", Annex "C" Petition for Review, CTA En Banc Rollo, p. 47.

Upon service of summons, petitioner-CITY TREASURER filed her motions to dismiss said cases based on: 1) Lack of jurisdiction, and 2) Forum Shopping due to respondent-CHINA BANK's failure to observe Section 196 of R.A. 7160, otherwise known as the Local Government Code (LGC) of 1991, as well as the filing of other cases with the Regional Trial Court for refund of taxes collected under Section 21 of the Manila Revenue Code (MRC), as amended.

Respondent-CHINA BANK filed its Opposition to the said motions and PUBLIC RESPONDENT issued three (3) Orders all dated August 18, 2003, denying petitioner-CITY TREASURER's motions to dismiss Civil Case Nos. 175169 CV, 175172 CV, and 175178 CV.

Upon receipt of the August 18, 2003 Order of PUBLIC RESPONDENT, petitioner-CITY TREASURER seasonably filed a Motion for Reconsideration on October 7, 2003. Respondent-CHINA BANK filed its opposition to the said motion on October 15, 2003. On July 6, 2004, PUBLIC RESPONDENT issued the JULY 26, 2004 JOINT ORDER denying the Motion for Reconsideration of petitioner-CITY TREASURER. With the JOINT ORDER, PUBLIC RESPONDENT included Civil Case No. 175177 CV in the denial of the Motion for Reconsideration when in truth and in fact, there was no Motion to Dismiss nor Motion for Reconsideration filed by the petitioner-CITY TREASURER therein.

Petitioner-CITY TREASURER then filed a Petition for Certiorari with the RTC 19, which issued the AUGUST 4, 2008 ORDER dismissing the said petition for lack of merit. On September 4, 2008, petitioner-CITY TREASURER filed a Motion for Reconsideration praying that said Order be reconsidered, and the three (3) cases being tried by MTC 23 be dismissed for lack of jurisdiction and utter lack of merit. RTC 19 promulgated the SEPTEMBER 25, 2008 ORDER denying petitioner-CITY TREASURER's motion for reconsideration for lack of merit.

On November 11, 2008, petitioner-CITY TREASURER filed the instant Petition for Review with the *CTA En Banc*, praying that a Decision be rendered reversing the AUGUST 4, 2008 ORDER as well as the SEPTEMBER 25, 2008 ORDER, and dismissing Civil Case Nos. 175169 CV, 175172 CV, 175177 CV, and 175178 CV for failure of CHINA BANK to file a written claim for refund with the CITY TREASURER.

Petitioner raised the following issues[5] in support of the instant Petition for Review, to wit:

> 1. WHETHER OR NOT THE REGIONAL TRIAL COURT ERRED IN HOLDING THAT THE LETTERS OF PROTEST OF RESPONDENT CHINA BANKING CORPORATION IS A WRITTEN CLAIM FOR REFUND;
>
> 2. WHETHER OR NOT THE METROPOLITAN TRIAL COURT HAS JURISDICTION OVER THE CASES CONSIDERING THAT THERE ARE NO WRITTEN CLAIM FOR REFUND; and
>
> 3. WHETHER OR NOT THE CASES SHOULD BE DISMISSED BY THE TRIAL COURT.

The *CTA En Banc* promulgated a Resolution[6] on November 27, 2008, ordering the respondent to file a Comment on the said Petition for Review. On December 15, 2008, respondent-CHINA BANK filed a "Comment"[7] praying that the instant Petition for Review be dismissed for lack of merit and the AUGUST 4, 2008 ORDER and SEPTEMBER 25, 2008 ORDER of RTC 19 in Civil Case No. 04-111014 be affirmed. On December 24, 2008, petitioner-CITY TREASURER filed a "Reply to the Comment of Respondent"[8]. The Court *En Banc* promulgated a Resolution[9] on January 5, 2009 giving due course to the petition for review and ordering the parties to file their respective Memoranda. In compliance with the

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[5] Petition for Review, CTA En Bank Rollo, p. 7.
[6] CTA En Banc Rollo, pp. 181-182.
[7] CTA En Banc Rollo, pp. 183-195.
[8] CTA En Banc Rollo, pp. 202-206.
[9] CTA En Banc Rollo, pp. 208-209.

said Resolution, petitioner-CITY TREASURER filed a Memorandum[10] on January 28, 2009 while respondent-CHINA BANK filed its Memorandum[11] on February 9, 2009. The instant case was submitted for decision in a Resolution[12] promulgated on February 12, 2009.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds the arguments of petitioner-CITY TREASURER meritorious.

Pertinent to the resolution of this case is Section 196 of the LGC, to wit:

> "**Sec. 196.** ***Claim for refund of Tax Credit.***- No case or proceeding shall be maintained in any Court for the recovery of any tax, fee or charges erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any Court after the expiration of two (2) years from the date of payment of such tax, fee or charge, or from the date the taxpayer is entitled to a refund or credit."

As correctly argued by petitioner-CITY TREASURER, the subject letter was a letter under protest of CHINA BANK's payment for an alleged additional local government tax. The said letter is hereby reproduced for easy reference:

> "January 16, 2003
>
> Office of the City Treasurer
> City of Manila
> Ground Floor, City Hall
> Manila
>
> Gentlemen,
>
> We refer to your assessment for Mayor's permit and other regulatory fee for the year 2003, specifically the additional business tax of PESOS: SEVENTY TWO THOUSAND SIX HUNDRED NINETY THREE & 55/100 (P72,693.55) for the year 2003 which is 50% of 1% of the

[10] CTA En Banc Rollo, pp. 210-217.
[11] CTA En Banc Rollo, pp. 218-235.
[12] CTA En Banc Rollo, p. 238.

> previous year's gross receipt. It is our position that we are not liable on the said additional local tax. And assuming that we are covered by Section 21 of the City ordinance, we vehemently disagree with the aforesaid assessment on the ground that such constitute double taxation.
>
> In the meantime, to avoid penalties/surcharges and any threat of closure, we are remitting the aforesaid assessment UNDER PROTEST included in Manager's check No. 0000006655 amounting to PESOS: ONE HUNDRED TWENTY TWO THOUSAND SEVEN HUNDRED SEVENTY & 55/100 ONLY (P122,770.55) payable to City Treasurer of Manila FAO CHINA BANK-ERMITA BRANCH.
>
> Please issue receipt for the corresponding amount.
>
> xxx xxx xxx"

This letter is not a claim for refund, as contemplated in the above-cited provision.

This Court sitting *en banc* had the occasion to rule on the very same issue presented in the instant petition in CTA EB Case No. 146 entitled, *"China Banking Corporation vs. The City Treasurer of Manila"*, to wit:

> "It is clear from the wordings of the letter that it is but a notice to the City Treasurer that petitioner is instituting the appropriate legal action for refund. The said letter does not ask the City Treasurer to do any act, in particular, to make a refund or credit of petitioner's alleged erroneous payment of local taxes. In the very words of the letter, the petitioner is about to institute a claim for refund or credit. The letter is not an action by itself, rather it shows payment under protest so as to negate waiver or acquiescence on the part of the taxpayer."[13]

In above letter, respondent-CHINA BANK was merely alleging that it is not liable on the assessed additional business tax, and assuming that it is covered by Section 21 of the Manila Revenue Code, the same constitutes double taxation. As opposed to the argument of respondent-CHINA BANK, the Court *En*

[13] China Banking Corporation vs. City Treasurer of Manila, CTA EB Case No. 146, August 2, 2006, as affirmed by the Supreme Court in "China Banking Corporation vs. The City Treasurer of Manila", G.R. No 174999, March 5, 2007 Resolution.

Banc finds that the letter did not apprise the petitioner-CITY TREASURER of the former's intention to effect a refund. The letter is but a notice to the petitioner-CITY TREASURER that respondent-CHINA BANK is paying the above-indicated amount in the assessment under protest.

In addition, the Court *En Banc* cannot subscribe to the pronouncement of Honorable Zenaida R. Daguna, Presiding Judge of RTC 19, to wit:

> "The protest made was a formal objection to the tax assessment made against the Private Respondent.
>
> Considering the justification made in the letter of protest, the intention is to free the Private respondent of any tax liability under the assessment. If ever payment was made, the end view is to refund the same. So basically, the letter protest has the same purpose of what was required under the Local Government Code. It being the case the Letter of Protest is considered substantial compliance with the requirement of 'written claim for refund'."

Also in the same *China Bank*[14] case, the CTA *En Banc* ruled that, "the LGC does not require a specific form of the letter of refund. However, there must be a categorical written statement on the part of the taxpayer whether he is manifesting his intention to effect a claim for refund or credit of alleged erroneous payment of local taxes, or writing a letter of protest or both". The Court *En Banc* cannot assume that respondent-CHINA BANK's ultimate intention in writing the above-quoted letter is to ask for a refund of payment of its alleged tax liabilities.

Well entrenched in our jurisprudence is that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption ***(Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87 [1999]).*** Accordingly, the claimant

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[14] Supra, note 13.

has the burden of proof to establish the factual basis of his or her claim for tax credit or refund ***(Citibank N.A. vs. Court of Appeals, 280 SCRA 459 [1997])***.

With this pronouncement, the Court *En Banc* finds that the MTC 23 has no jurisdiction over 175169 CV, 175172 CV, 175177 CV, and 175178 CV for failure of respondent-CHINA BANK to file a written claim for refund with the petitioner-CITY TREASURER, pursuant to Section 196 of the LGC. Compliance with the said provision is a condition *sine qua non*, non-compliance of which would not vest the court *a quo* jurisdiction over the subject cases. Thus, Civil Case Nos. 175169 CV, 175172 CV, 175177 CV, and 175178 CV should be dismissed by the MTC 23 for lack of jurisdiction.

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. Accordingly, the August 4, 2008 and September 25, 2008 Orders issued by the Regional Trial Court, Branch 19, Manila, in Special Civil Action No. 04-111014 entitled, *"Liberty M. Toledo, in her official capacity as City Treasurer of Manila, petitioner vs. CHINA BANKING CORPORATION and the HON. PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 23, MANILA, respondents"* are hereby **REVERSED** and **SET ASIDE**. Accordingly, Civil Case Nos. 175169 CV, 175172 CV, 175177 CV, and 175178 CV are hereby **DISMISSED** for lack of jurisdiction due to respondent-CHINA BANK's failure to file a written claim for refund with petitioner-CITY TREASURER.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice