REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DUNLEVY FOOD CORPORATION, Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 9361

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:

JUN 16 2020 1:32 PM

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RESOLUTION

MINDARO-GRULLA, J.:

For resolution is respondent's **Motion for Reconsideration (Decision dated 11 December 2019)** filed on December 26, 2019, with petitioner's **Comment/Opposition to Motion for Reconsideration dated 26 December 2019** filed through registered mail on February 3, 2020, and received by the Court on February 11, 2020.

On December 11, 2019, a Decision was promulgated by this Court, granting petitioner's claim for refund for respondent's failure to strictly observe the pertinent provisions of Revenue Memorandum Order (RMO) No. 19-2007 in collecting compromise penalties, the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱7,800,000.00**, representing

compromise penalties imposed without authority or were wrongfully collected.

SO ORDERED.

In his Motion, respondent reiterates that this Court has no jurisdiction over the present case since the compromise penalties were not collected without authority, or have been excessively or in any manner wrongfully collected. Respondent claims that he is not prevented from accepting compromise penalty that is higher than what was provided as long as the amount was not demanded, but rather, voluntarily paid by petitioner. As such, respondent asserts that the subject compromise penalty, being voluntarily paid by petitioner, can neither be considered an erroneous nor illegal assessment or collection.

Respondent further insists that petitioner failed to comply with Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended. Under the said Section, there should be an erroneous assessment, erroneous collection, illegal assessment or illegal collection. However, in the present case, none of the aforementioned is present since petitioner voluntarily paid the tax. Assuming arguendo, what was paid was beyond what was required by law, the same cannot be considered erroneous assessment or erroneous collection since what is required to be paid is only the proper taxes. Thus, respondent asserts that while the surplus paid by petitioner can be considered erroneous payment, the same cannot be construed to mean erroneously assessed or erroneously collected tax.

Lastly, respondent avers that tax exemption is never presumed and is construed *strictissimi juris* against the entity claiming the same.

On the other hand, in its Comment, petitioner maintains that the arguments raised by respondent in the present Motion are mere rehashes of the arguments in his Answer, which the Court already addressed and/or passed upon in the Decision assailed. In any case, petitioner asserts that respondent failed to show proof that it in fact offered to voluntarily pay the penalties for its alleged violations.

After due consideration, this Court respondent's Motion for Reconsideration bereft of merit.

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While this Court acknowledges that respondent is not prevented from accepting a compromise penalty higher than what is provided, pursuant to Section 6, Item III of RMO No. 19-2007[1], which provides that:

> "*III. Guidelines and Instruction:*
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> x x x
>
> 6. The schedule of compromise penalties herein prescribed shall not prevent the Commissioner or his duly authorized representative from accepting a compromise amount higher than what is provided hereof. A compromise offer lower that the prescribed amount may be accepted after approval by the Commissioner of Internal Revenue or the concerned Deputy Commissioner/Assistant Commissioner/Regional Director."

It must be emphasized, however, Section 3, Item III of the same RMO requires strict adherence to the schedule of penalties appended thereto as Annex "A". The said Section categorically states that in no case shall the compromise penalty differ in the amount from those specified in the Schedule, except when duly approved by the Commissioner, or concerned Deputy Commissioner, or in proper cases, by the Regional Directors, thus:

> "*III. Guidelines and Instruction:*
>
> x x x
>
> 3. In no case shall the compromise penalty differ in amount from those specified in the aforementioned Schedule, except when duly approved by the Commissioner or concerned Deputy Commissioner, or in proper cases, by the Regional Directors."

Accordingly, without proof that the Commissioner or his duly authorized representatives approved the penalty accepted as indicated in BIR Form No. 0605, the penalties imposed should be set aside for not being in accordance with Annex "A" of RMO No. 19-2007.

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[1] "SUBJECT: The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code", August 8, 2007.

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As to respondent's contention that petitioner failed to comply with Section 229 of the NIRC of 1997, as amended, the issue has already been exhaustively passed upon by this Court in the Decision assailed.

It also bears stressing that respondent indeed failed to show proof that it was petitioner who voluntarily offered to pay the subject amount being refunded. As a matter of fact, petitioner has consistently claimed that it did not violate any provisions of the NIRC of 1997, as amended, or any of the regulations issued of the BIR, to warrant the imposition of compromise penalties. Accordingly, absent any proof, there is paucity of merit in respondent's asseveration that the penalty was voluntarily paid by petitioner.

In view of the foregoing, there is no cogent reason to disturb the assailed Decision.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Decision dated 11 December 2019) is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

We Concur:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice