REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ALASKA MILK CORPORATION, *Petitioner,*

-*versus*-

OFFICE OF THE CITY TREASURER and/or DAVAO CITY, *Respondents.*

CTA AC No. 272

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:

AUG 02 2024
1:44 p.m.

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DECISION

MANAHAN, J.:

THE CASE

Before the Court is a *Petition for Review* filed by Alaska Milk Corporation (AMC),[1] praying for the reversal and setting aside of the Decision dated January 4, 2022,[2] and the Order dated August 4, 2022,[3] both rendered by the Regional Trial Court (RTC) of Davao City – Branch 16, in Civil Case No. R-DVO-20-02072-CV, captioned "*Alaska Milk Corporation, Petitioner, versus Office of the City Treasurer and/or Davao City, Respondent*".

For easy reference, the dispositive portions of the challenged Decision and Order, respectively, read as follows:

Decision dated January 4, 2022:

"**WHEREFORE, premises considered**, the instant Petition for Review of the Petitioner is hereby **DENIED** and **DISMISSED**.

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[1] Docket, pp. 5 to 51.
[2] Docket, pp. 53 to 59; RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 817 to 823.
[3] RTC Docket (Civil Case No. R-DVO-20-02072-CV), p. 839.

SO ORDERED."

<u>Order dated August 4, 2022</u>:

"Despite the arguments raised in the ***'Motion for Partial Reconsideration'***, the Court finds no cogent reason to alter, modify or set aside the assailed Decision dated January 4, 2022.

As such, the instant ***'Motion for Partial Reconsideration'*** is hereby **DENIED**.

SO ORDERED."

THE PARTIES

Petitioner AMC is a domestic corporation, duly organized and existing under Philippine laws, with principal office address at 6/F Corinthian Plaza, Paseo de Roxas, Legaspi Village, Makati City, Metro Manila.[4]

On the other hand, respondent Office of the City Treasurer of Davao City is a department of the City Government of Davao City, which is tasked to verify, assess and collect taxes, fees and charges. It may be served notices, pleadings, resolutions, other papers and the judgment in this case at the Office of the Treasurer, City Hall Drive, San Pedro Street, Business Tax Division, Davao City Hall, Davao City.[5]

Respondent Davao City is a political corporation organized and existing under Philippine laws. It may be served notices, pleadings, resolutions, other papers and the judgment in this case at the City Hall Drive, San Pedro Street Davao City, Davao City.[6]

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[4] Par. 1, *Petition for Review*, vis-à-vis par. 1, *Answer*, RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 8 and 473, respectively.
[5] Par. 2, *Petition for Review*, vis-à-vis par. 2, *Answer*, RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 6 and 473, respectively.
[6] Par. 3, *Petition for Review*, vis-à-vis par. 2, *Answer*, RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 7 and 473, respectively.

THE FACTS

Petitioner sent its letter dated April 15, 2019 to respondent Treasurer, stating that it is not liable for business taxes because it only uses a warehouse therein. After a series of exchanges, respondent Treasurer maintained its position that petitioner was liable for business taxes in Davao City.[7]

On January 17, 2020, petitioner received from respondent Treasurer a Tax Order of Payment of even date, finding the former liable for local business taxes (LBTs) for the year 2019, and the 1st quarter of 2020, in the total amount of ₱1,857,602.58, broken down as follows:[8]

Business tax for 2019	₱ 1,498,273.11
Business tax for 2020	340,284.47
Regulatory fees for 2020	18,115.00
Charges for 2020	930.00
Total Amount Payable	**₱1,857,602.58**

Fearing the possible repercussions of non-payment and desiring to continue with the lawful and legitimate operations of business in the City, petitioner paid respondent Davao City the entire assessed amount of ₱1,857,602.58, under protest, and filed its Protest against the said assessment, with official receipts attached to the said letter.[9] Petitioner later filed its Supplemental Protest Letter dated January 30, 2020, on January 31, 2020.[10]

On March 23, 2020, petitioner received the letter dated March 5, 2020 (the Notice of Denial) from respondent Treasurer, denying its Protest and Supplemental Protest.[11] In the said letter, respondent Treasurer argues that petitioner had been doing business in Davao City and had continuously

[7] Par. 18, *Petition for Review*, vis-à-vis par. 9, *Answer*, RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 10 and 474, respectively.
[8] Par. 19, *Petition for Review*, vis-à-vis par. 9, *Answer*, RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 10 and 474, respectively.
[9] Par. 20, *Petition for Review*, vis-à-vis par. 9, *Answer*, RTC Docket (Civil Case No. R-DVO-20-02072-CV), p. 10 and p. 474, respectively; and par. 7, *Petition for Review*, vis-à-vis par. 4, *Answer*, RTC Docket (Civil Case No. R-DVO-20-02072-CV), p. 5, and pp. 473 to 474, respectively.
[10] Par. 22, *Petition for Review*, vis-à-vis par. 4, *Answer*, RTC Docket (Civil Case No. R-DVO-20-02072-CV), p. 12, and pp. 473 to 474, respectively.
[11] Par. 23, *Petition for Review*, vis-à-vis par. 5, *Answer*, RTC Docket (Civil Case No. R-DVO-20-02072-CV), p. 12 and p. 474, respectively.

paid the corresponding local business tax due, thereby negating its claim that its Davao warehouse was purely utilized for storage purposes. Respondent Treasurer likewise insists that petitioner had sales in Davao City, considering that: (a) petitioner's goods or products, which are the subject of its sales, were delivered to customers in Davao City; and (b) said goods were sourced from the Davao warehouse. In this regard, respondent Treasurer, concludes that said sales or transactions were consummated in Davao City and therefore taxable therein, pursuant to Ordinance No. 158-05, entitled *"An Ordinance Approving the 2005 Revenue Code of the City of Davao, as amended"*.[12]

Petitioner then filed a *Petition for Review* before the RTC of Davao City on July 1, 2020.[13] The case was docketed as Civil Case No. R-DVO-20-02072-CV and was raffled to the RTC – Branch 16.

Within the extended period,[14] respondents filed their *Answer* on September 25, 2020,[15] stating the following special and affirmative defenses, among others, to wit: (a) the assessment made by respondent has legal basis, particularly, Sections 76 and 79(b) of Ordinance No. 0291-17, otherwise known as 2017 Local Revenue Code of Davao City; (b) plaintiff had been paying local business tax since 1998 and yet there was no protest made since the inception of its business in Davao City until 2018; (c) it was only in the 2nd quarter of 2019 that plaintiff manifested that their warehouse situated in Barangay Panacan does not accept orders and does not issue sales invoices, hence, there is doubt that the petition is a mere afterthought; (d) plaintiff had consummated their business transactions in Davao City, specifically, the aspect of delivery of the products where the consummation stage of the contract transaction was attained; (e) all sales or transactions consummated in Davao City are subject to local business tax; (f) the warehouse of plaintiff situated in Davao city is considered as a branch or sales office rendering it liable to pay local business tax under the 2017 Local Revenue Code of Davao City; (g) the 2017 Local Revenue Code of Davao City

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[12] Par. 24, *Petition for Review*, vis-à-vis par. 9, *Answer*, RTC Docket (Civil Case No. R-DVO-20-02072-CV), p. 12, and p. 474, respectively.
[13] RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 3 to 31.
[14] *Motion for Extension of Time to File Answer to the Petition of the Plaintiffs*, RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 468 to 471; Order dated September 1, 2020, RTC Docket (Civil Case No. R-DVO-20-02072-CV), p. 472.
[15] RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 473 to 482.

enjoys the presumption of validity as it went through the process for the enactment, approval and effectivity of ordinances outlined in the LGC; and (h) the Supreme Court has continuously upheld the basic principle that a collateral attack on a presumably valid law is not allowed.

Pursuant to the Order dated September 30, 2020,[16] the case was referred to mediation on December 2, 2020, and the parties underwent mediation proceedings as scheduled. However, the parties failed to settle amicably before the Philippine Mediation Center.[17]

The case was set for pre-trial on November 3, 2020,[18] but was reset to, and held on, January 19, 2021.[19] Prior thereto, the *Pre-Trial Brief for the Respondents* was filed on November 25, 2020,[20] while the *Pre-Trial Brief* for the petitioner was filed on January 12, 2021.[21]

Since referral to Judicial Dispute Resolution (JDR) proceeding of Civil Case No. R-DVO-20-02072-CV proved futile, the parties were directed to file their respective memoranda within thirty (30) days from notice.[22]

The *Memorandum for the Respondents* was submitted on March 15, 2021,[23] while petitioner's *Memorandum* was filed on May 11, 2021.[24]

In the meantime, on June 29, 2021, petitioner filed a *Motion to Admit Supplement to the Petition,* with an attached *Supplement [To the Petition dated 22 June 2020],*[25] praying for additional refund of local business tax in the amount of ₱828,074.42, representing the 1st and 2nd quarters of taxable

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[16] RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 492 to 493.
[17] Mediator's Report dated January 18, 2021, RTC Docket (Civil Case No. R-DVO-20-02072-CV), p. 544.
[18] Notice of Pre-Trial Conference dated September 30, 2020, RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 494 to 496.
[19] Notice of Cancellation and Resetting (Pre-Trial) dated November 3, 2020, RTC Docket (Civil Case No. R-DVO-20-02072-CV), p. 497; Order dated January 19, 2021, RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 546 to 547.
[20] RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 501 to 511.
[21] RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 518 to 543.
[22] Order dated January 19, 2021, RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 546 to 547.
[23] RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 600 to 610.
[24] RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 660 to 689.
[25] RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 760 to 784.

year 2021. The RTC granted the said *Motion*, and admitted the said *Supplement*, in the Order dated June 15, 2021,[26] and hence, the total claim for refund increased from ₱1,857,602.58 to ₱2,685,677.00.

The RTC of Davao City – Branch 16 promulgated the assailed Decision on January 4, 2022.[27]

On June 2, 2022, petitioner filed a *Motion for Partial Reconsideration.*[28] However, the RTC of Davao City – Branch 16 issued the assailed Order,[29] denying petitioners' *Motion for Partial Reconsideration.*

Undeterred, petitioner filed with the Court of Tax Appeals (CTA) the present *Petition for Review* on October 7, 2022,[30] and the same was raffled to this Court's Second Division.

In the Resolution dated November 10, 2022,[31] the Court: (1) ordered petitioner to submit a compliant *Verification and Certification of Non-Forum Shopping* in accordance with A.M. No. 19-10-20-SC; and directed the Branch Clerk of Court of RTC of Davao City – Branch 16 to elevate the entire records of Civil Case No. R-DVO-20-02072-CV to this Court within five (5) days from notice.

On December 6, 2022, petitioner filed a *Compliance with Submission.*[32] In the Resolution dated January 4, 2023,[33] the Court directed respondents to file their comment on the *Petition for Review* within ten (10) days from notice.

Subsequently, on February 27, 2023, the records of Civil Case No. R-DVO-20-02072-CV were transmitted to this Court.[34]

Respondents then posted their *Comment* on March 10, 2023.[35]

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[26] RTC Docket (Civil Case No. R-DVO-20-02072-CV), p. 759.
[27] RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 817 to 823.
[28] RTC Docket (Civil Case No. R-DVO-20-02072-CV), pp. 824 to 837.
[29] RTC Docket (Civil Case No. R-DVO-20-02072-CV), p. 839.
[30] Docket, pp. 5 to 51.
[31] Docket, pp. 65 to 66.
[32] Docket, pp. 67 to 71.
[33] Docket, pp. 76 to 77.
[34] Docket, pp. 78 to 81.

On May 2, 2023, petitioner filed its *Memorandum*;[36] while the *Memorandum for the Respondents* was posted on July 4, 2023.[37]

In the meantime, the present case was transferred to this Court's Third Division, pursuant to Administrative Circular No. 01-2023 dated May 23, 2023 entitled, "Reorganizing the Divisions of the Court".[38]

Thereafter, the case was deemed submitted for decision on August 7, 2023.[39]

THE ISSUE

Petitioner raised the following issue for this Court's resolution:

> "WHETHER THE COURT *A QUO* CORRECTLY RULED THAT PETITIONER IS LIABLE FOR LOCAL BUSINESS TAXES FOR ITS ACTIVITIES IN THE DAVAO WAREHOUSE, WHICH WAS THE BASIS OF RESPONDENTS' 2020 AND 2021 ASSESSMENTS FOR DEFICIENCY TAXES AGAINST PETITIONER."[40]

Petitioner's arguments:

Petitioner argues that it has no "branch" or "sales office" in Davao City, as it did not, and does not conduct or transact sales in its Davao Warehouse, as shown by the evidence on record; that the assessments issued by respondents are without legal basis; and that respondents' assessment of LBTs on petitioner is an *ultra vires* act for being violative of Section 150 of the 1991 Local Government Code (LGC), and thus, the 2020 and 2021 Assessments are null and void.

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[35] Docket, pp. 88 to 91.
[36] Docket, pp. 98 to 138.
[37] Docket, pp. 202 to 208.
[38] Notice, Docket, p. 189.
[39] Minute Resolution dated August 7, 2023, Docket, p. 210.
[40] Issue, *Petition for Review*, Docket, p. 24.

Respondents' counter-arguments:

Respondents contend that the legal basis of the tax assessment against petitioner is Section 79 of Davao City Ordinance No. 0291-17, Series of 2017; that it is well within its authority and duty to assess and collect taxes against petitioner based on a valid law, in this case, the said Ordinance; that the enforceability of a valid local tax ordinance has been repeatedly upheld by the Supreme Court; and that hence, the assailed Decision of the Court *a quo* dated January 4, 2022 dismissing and denying petitioner's petition under Section 195 of the LGC should stand.

THE RULING

The CTA has no jurisdiction over the instant case

The Court shall first determine whether it has jurisdiction over the instant case.

Section 195 of the LGC provides:

> "SECTION 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. **The local treasurer shall decide the protest within sixty (60) days from the time of its filing**. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.**" *(Emphasis supplied)*

Based on the above provision, the taxpayer has sixty (60) days from receipt of the notice of assessment to file a written protest. Consequently, the local treasurer has sixty (60) days to decide on the protest. Meanwhile, the taxpayer shall have thirty (30) days to file an appeal from (1) the receipt of the denial of the protest; or (2) from the lapse of the sixty (60)-day period for the local treasurer to decide on the protest. Failure to file an appeal within the prescribed period makes the assessment conclusive and unappealable.

Here, the RTC found that AMC received the assessment on January 17, 2020. Counting sixty (60) days therefrom, AMC had until March 17, 2020 to file its written protest. Meanwhile, a perusal of the records shows that AMC filed a *pro forma* protest on January 20, 2020[41] and a supplemental protest on January 31, 2020.[42] Considering the foregoing, the Court finds that AMC timely filed its protest.

Consequently, respondents have sixty (60) days from January 31, 2020, or until March 31, 2020, within which to decide on the protest.

Records reveal that respondent issued the Notice of Denial on March 12, 2020[43] which is well within the sixty (60)-day period to decide the protest.

It is noteworthy that AMC's written protest also incorporates a claim for refund. With respect to the refund claim, Section 196 of the LGC provides:

> "**Section 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 charge 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 the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit."

In *City Treasurer of Manila v. Philippine Beverage Partners, Inc., substituted by Coca-Cola Bottlers Philippines*

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[41] Exhibit "C," RTC Docket, p. 285.
[42] Exhibit "D," RTC Docket, pp. 287-290.
[43] Exhibit "E," RTC Docket, pp. 291- 292.

(*Coca-Cola* case),[44] the Supreme Court addressed the scenario where the taxpayer both receives an assessment and claims for refund, as follows:

> "To stress, where an assessment is issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund at any time within the full period of two years from the date of payment as Section 196 may suggest. If refund is pursued, the taxpayer must administratively question the validity or correctness of the assessment in the 'letter-claim for refund' within 60 days from receipt of the notice of assessment, and thereafter bring suit in court within 30 days from either decision or inaction by the local treasurer.
>
> Simply put, there are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment. *One*, pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. *Two*, bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax."[45]

With respect to the first (1st) condition laid down in the *Coca-Cola* case, *i.e.*, pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund, the Court finds that AMC satisfied the same, as previously discussed in the preceding paragraphs.

On the other hand, with respect to the second (2nd) condition, *i.e.*, bring an action in court within thirty (30) days from the decision or inaction by the local treasurer, petitioner received the Notice of Denial on March 12, 2020.[46] Counting thirty (30) days therefrom, AMC had until April 11, 2020 within which to file the judicial action.

On May 14, 2020, the Supreme Court issued Administrative Circular No. 39-2020, in relation to the extension of period for court filings due to the COVID-19 pandemic. It pertinently states:

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[44] G.R. No. 233556, September 11, 2019.
[45] *Id.*, citing *City of Manila and Office of the City Treasurer of Manila v. Cosmos Bottling Corporation*, G.R. No. 196681, June 27, 2018.
[46] See Note 43.

> "4. The filing of petitions, appeals, complaints, motions, pleadings and other submissions that **fall due up to 31 May 2020 before the courts in areas under MECQ areas is extended for 30 calendar days, counted from 1 June 2020**, but pleadings and other court submissions may still be filed by the parties within the reglementary period on or before 31 May 2020 through electronic means, if preferred and able. In the same manner, the periods for court actions with prescribed periods of courts in areas under MECQ are likewise extended for 30 calendar days counted from 1 June 2020."*(Emphasis supplied)*

Based on the above-quoted circular, pleadings that fell due up to May 31, 2020 was extended for 30 calendar days, counted from June 1, 2020, or until July 1, 2020. Hence, AMC timely filed the Petition before the RTC on July 1, 2020.

With respect to the filing of the instant Petition before the CTA, Section 3(a), Rule 8 of the 2005 Revised Rules of the CTA (RRCTA) pertinently provides:

> "SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) A party adversely affected by a decision, ruling or the inaction of xxx a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days **after receipt of a copy of such decision or ruling** xxx"*(Emphasis supplied)*

In the instant case, AMC alleges that on September 8, 2022,[47] it received the assailed Order denying its Motion for Reconsideration. Meanwhile, in the RTC records, the Order denying the Motion for Reconsideration was copy furnished to petitioner's law firm on August 4, 2022.[48] However, after careful review of the records, no evidence was presented by AMC to show that it indeed received the assailed Order on September 8, 2022. Thus, the Court has no means to verify whether the present Petition for Review was timely filed.

Considering AMC's failure to provide proof of its date of receipt of the assailed Order or the timeliness of the filing of the instant Petition, the Court has no jurisdiction to entertain the same.

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[47] Par. 6, *Petition for Review*, Docket, p. 7.
[48] RTC Docket, p. 839.

ACCORDINGLY, the Petition for Review is **DENIED**, for lack of jurisdiction.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(on leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

ATTESTATION

I attest 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's Division.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice