Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB CASE NO. 1341** (CTA Case No. 8393)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS RINGPIS-LIBAN, JJ.
CARRIER AIR CONDITIONING PHILIPPINES, INC., Respondent.	Promulgated: JUN 02 2016 3:42 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2] dated March 17, 2015, rendered by the Second Division of

[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En banc Docket, pp. 17-35.

this Court in CTA Case No. 8393, and its Resolution[3] dated July 13, 2015.

Petitioner assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively read as follows:

Decision dated March 17, 2015:

*"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent is **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favour of petitioner in the amount of P11,395,574.20, representing petitioner's final withholding tax on the excess cash dividends paid in 2009 which was erroneously withheld and remitted to the BIR.*

SO ORDERED."

Resolution dated July 13, 2015:

*"**WHEREFORE**, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, respondent's Motion for Reconsideration is hereby **DENIED** for having been filed out of time and for lack of merit.*

SO ORDERED."

The pertinent facts as narrated by this Court's Division in its Decision read as follows:

"Petitioner[4] is a domestic corporation registered with the Securities and Exchange Commission with SEC Reg. No. A199721536, and with principal office address at Km. 20 East Service Road, South Superhighway, Alabang, Muntinlupa City. It is duly registered with the Bureau of Internal Revenue since January 1, 1997, with Taxpayer

[3] En banc Docket, pp. 37-43.

[4] The Carrier Air conditioning Philippines, Inc. was the petitioner while the Commissioner of Internal Revenue(CIR) was the respondent in the Division. Before the Court en banc, The Carrier Air conditioning Philippines, Inc. is the respondent while the Commissioner of Internal Revenue (CIR) is the petitioner.

Identification No. 005-376-435-000. Petitioner is being represented in this case by the law firm of Castillo Laman Tan Pantaleon and San Jose, with office address at the 2nd, 3rd, 4th, 5th and 9th Floors, The Valero Tower, 122 Valero St., Salcedo Village, 1227 Makati City, where summons, pleadings, notices and other processes of this Honorable Court may be served.

Respondent BIR [5], through the Commissioner of Internal Revenue, is the agency of the government tasked with the enforcement of revenue laws and the collection of taxes and duties. Respondent is being represented in this case by the legal officers of the Legal Division, Revenue Region 8, Makati City, with office address at the 2/F Legal Division, BIR Building, No. 313 Sen. Gil Puyat Ave., Makati City, where summons, pleadings, notices and other processes of this Honorable Court may be served.

Based on petitioner's Secretary's Certificate, during a special meeting on November 23, 2009, its Board of Directors (BOD) resolved to approve the declaration of cash dividends in favor of Carrier HVACR Investments B.V. ("Carrier BV" for brevity) in the amount of P871,084,418.00 out of the unrestricted Retained Earnings of the Corporation as of October 31, 2009, payable in the manner specified below:

Payable on or before	***Amount***
November 30, 2009	654,000,000.00
December 31, 2009	217,084,418.00
Total	Php 871,084,418.00

On November 2, 2011, petitioner's BOD held a special meeting whereby it unanimously adopted the following resolutions as contained in the Secretary's Certificate, We quote:

> *'WHEREAS, on November 23, 2009, the Corporation passed a board resolution declaring the total amount of Php871,084,418.00 as cash dividends, out of the unrestricted retained earnings of the Corporation as of October 31, 2009 (the '2009 Cash Dividends');*
>
> *WHEREAS, based on the audited financial statements of the Corporation as of December 31, 2009, however, it was noted that the amount of retained earnings available for dividend declaration was less than the 2009 Cash Dividends, thus resulting in the*

[5] Ibid.

overpayment of dividends in the amount of Php113,955,742.00 (the '2009 Overpayment of Dividends');

WHEREAS, Carrier HVACR Investments BV undertook to refund the Overpayment of Dividends;

WHEREAS, the Corporation's management has proposed to declare cash dividends in the amount of Php150,333,970.00, out of the unrestricted retained earnings of the Corporation as of December 31, 2010, and out of said amount, the Overpayment shall be deducted, thus resulting in net dividend payable of Php21,344,831.00;

'NOW, THEREFORE, RESOLVED, That the Board of Directors of ***Carrier Air Conditioning Philippines, Inc****. (the 'Corporation') approve, as it hereby approves, the declaration of cash dividends in the amount of Php150,333,970.00, out of the unrestricted retained earnings of the Corporation as of December 31, 2010;*

RESOLVED, FURTHER, to authorize the Corporation to deduct from the amount of Php150,333,970.00, the 2009 Overpayment of Dividends, thus resulting to a net dividend payable of Php21,344,831.00 (the 'Net Dividend Payable');

RESOLVED, FURTHER, to authorize the Corporation to remit and pay to the stockholders of record the Net Dividend Payable on or before November 30, 2011;

RESOLVED, FINALLY, to authorize the management of the Corporation to perform such acts and execute any and all documents as may be necessary or required to implement the foregoing resolutions.'

On November 29, 2011, petitioner filed an administrative claim for refund or issuance of TCC in the amount of P11,395,574.20 representing Final Withholding Tax (FWT) on dividends erroneously withheld and paid by petitioner to BIR.

On December 9, 2011 petitioner filed a Petition for Review before the Court of Tax Appeals (CTA).

Respondent filed her Answer (with Motion to Dismiss) on January 30, 2012 and interposed xxx Special and Affirmative Defenses/Grounds for the Dismissal of the Petition for Review:

xxx xxx xxx.

On February 17, 2012, in compliance with the Resolution of the Court, petitioner submitted its Reply to Answer and Opposition to Motion to Dismiss, in response to respondent's Answer (with Motion to Dismiss).

In a Resolution promulgated on April 24, 2012, the Court denied respondent's prayer for the dismissal of the instant petition.

The case was set for pre-trial conference on June 14, 2012. Pre-Trial Brief (for the Respondent) and petitioner's Pre-Trial Brief were both filed on June 11, 2012. An Amended Pre-Trial Brief (for the Respondent) was filed thru registered mail on June 19, 2012.

On August 17, 2012, the parties filed their Joint Stipulation of Facts and Issues. Thereafter, the Court issued a Pre-Trial Order dated August 31, 2012 that terminated the pre-trial and set the initial presentation of evidence for the petitioner on September 24, 2012.

Petitioner submitted its Offer of Documentary Evidence on July 8, 2013 offering Exhibits "A" to "BB". The Court issued a Resolution on August 6, 2013 admitting Exhibits "A" to "B-2", "D" to ""Q-1", "W" to "Z-2" and "BB" while Exhibits "C-1" to "C-3", "R-1" to "V", "AA" and "AA-1" were denied.

On August 22, 2013, petitioner filed via registered mail a Motion for Partial Reconsideration praying for the admission of Exhibits "C-1" to "C-3", "R-1" to "V", "AA" and "AA-1". The Court issued a Resolution dated October 31, 2013 directing petitioner to comply with Sections 3 and 4 of the Judicial Affidavit Rule by submitting a compliant replacement affidavit while the resolution of the Motion for Partial Reconsideration was held in abeyance.

Meanwhile, during the hearing on November 11, 2013, counsel for respondent manifested that he has no witness to present in this case.

On November 15, 2013, petitioner submitted its Compliance with Motion, which was Noted and Granted in the Court's Order dated November 19, 2013. On December 3, 2013, petitioner filed its Compliance by submitting the notarized and authenticated revised Judicial Affidavit of its third witness, Jean Charles Thoumire.

In a Resolution dated January 20, 2014, the Court partially granted petitioner's Motion for Partial

Reconsideration. The Court admitted Exhibits "C-1" to "C-3" "R-1" to "R-3" "S" to "U-4" "AA" and "AA-1", while Exhibits ""'R-5", "R-6" and "V" were denied.

After petitioner submitted its Memorandum on April 4, 2014, without respondent's Memorandum, the Court submitted this case for decision on April 11, 2014.

The parties jointly stipulated the following issues for this Court's resolution:

a. Whether there is an actual and proper reversal of cash dividends made by petitioner;

b. Whether petitioner has remitted the final withholding tax on the dividends to the BIR, which is currently the subject of the case for refund or issuance of a TCC;

c. Whether petitioner's claim for refund or issuance of a TCC is duly substantiated by documentary evidence;

d. Whether petitioner is entitled to refund or issuance of a TCC in the amount of P11,395,574.20, representing final tax withheld and remitted on the excess cash dividends paid by petitioner to Carrier BV on November 24, 2009 and December 22, 2009.

On March 17, 2015, this Court's Division, finding that there was over-remittance of final withholding tax, ordered CIR to refund or issue a tax credit certificate, the pertinent portion of which read as follows:

"xxx, the corresponding FWT due on the dividends for 2009 & 2011 were remitted to the BIR. Since petitioner reversed 2009 dividends in the amount of P113,955,742.00, which was included in the P871,084,418.00 dividends declared, paid and subjected to 10°/o FWT, there appears to be an over remittance of P11,395,574.20 xxx:

xxx

Likewise, the 2009 gross dividend of P871,084,417.99 was properly subjected to the preferential tax rate of 10°/o in accordance with Article 10(2)(a) of the Philippines-Netherlands Tax Treaty as c *confirmed by BIR Ruling No. DA-ITAD-044-11 dated February 10, 2011. In applying for a tax treaty relief, petitioner substantially complied with Revenue Memorandum Order (RMO) No. 1-2000. Notably, the 'application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief'.*

Therefore, petitioner is entitled to a refund or issuance of a TCC in the amount of P11,395,574.20 representing FWT remitted on the excess cash dividends paid in 2009."

Petitioner[6] filed a Motion for Reconsideration which was denied for having been filed out of time and for lack of merit, hence, the instant petition.

Petitioner raised the following arguments:

1. THE FINDINGS OF THE HONORABLE COURT OF TAX APPEALS (2^{ND} DIVISION) THAT THE MOTION FOR RECONSIDERATION OF THE COMMISSIONER OF INTERNAL REVENUE TO THE DECISION PROMULGATED ON MARCH 17, 2015 WAS BELATEDLY FILED IS BEREFT OF ANY FACTUAL AND LEGAL BASIS.

2. BIR RULING NO. DA-ITAD 044-11 ISSUED ON FEBRUARY 10, 2011 AND BIR RULING NO. ITAD-343-12 ISSUED ON SEPTEMBER 18, 2012 CANNOT BE RELIED UPON BY PETITIONER.

3. RESPONDENT FAILED TO COMPLY WITH REVENUE MEMORANDUM ORDER (RMO) NO. 1-2000.

4. RESPONDENT HAS NO LEGAL PERSONALITY TO FILE A CASE FOR REFUND.

5. THERE IS NO ERRONEOUS OR ILLEGAL COLLECTION OF TAX, OR A PENALTY COLLECTED

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[6] Ibid.

WITHOUT AUTHORITY, OR SUM EXCESSIVELY OR WRONGFULLY COLLECTED.

In its comment, respondent asserts that the Court's Division correctly determined the date of mailing shown by the post office stamp on the envelope, April 8, 2015 as the filing date, which was two (2) days beyond the allowable period to file a motion for reconsideration. Thus, petitioner claims that the Court's Division assailed decision has become final. Nevertheless, respondent submits that the petition be denied for lack of merit.

We resolve.

This Court's Division was correct in relying that the date of mailing as shown by the post office stamp on the envelope is the date of filing since no registry receipt was presented, to wit:

> *"Respondent[7], in her motion, admitted that she received a copy of the assailed Decision on **March 19, 2015**. Counting the fifteen (15)-day period, the last day for the filing of the Motion for Reconsideration was on April 3, 2015. Since April 3, 2015 was declared a regular holiday, and April 4 and 5, 2015 fell on Saturday and Sunday, respectively, **the last day was on April 6, 2015**.*
>
> *Upon verification of the records of this case, respondent filed her Motion for Reconsideration, via registered mail on April 8, 2015, as shown by the post office stamp on the envelope attached to the motion*
>
> *As a rule, if the filing of the motion is done through registered mail, the date of mailing as shown by the post office stamp on the envelope or the registry receipt shall be considered as the date of its filing. This rule is governed by Section 3, Rule 13 of the Rules of Court, to wit*

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[7] The Carrier Air conditioning Philippines, Inc. was the petitioner while the Commissioner of Internal Revenue(CIR) was the respondent in the Division. Before the Court en banc, The Carrier Air Conditioning Philippines, Inc. is the respondent while the Commissioner of Internal Revenue (CIR) is the petitioner.

> *SEC. 3. Manner of filing. - The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case,* ***the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court****. The envelope shall be attached to the record of the case. (Emphasis supplied)*
>
> *While there was no registry receipt presented, the date of the filing of the respondent's motion can still be verified since it was corroborated by the post office stamp on the envelope attached to the motion. The date appearing on the envelope is* ***April 8, 2015****, thus, it is the date the motion was deemed filed. xxx."*

However, in support to petitioner's claims that her Motion for Reconsideration was filed on time, the registry receipt[8] dated April 6, 2015 was attached to the instant petition. Had petitioner's counsel been prudent, the registry receipt should have been attached to the Motion for Reconsideration to show the date it was filed. Considering that the registry receipt with control No. 17122 dated April 6, 2015, is the same control number found in the envelope of the Motion for Reconsideration[9], We consider the Motion for Reconsideration to have been filed on time and the petition is given due course. Nonetheless, the petition has no merit.

Petitioner's arguments such as (1) BIR Ruling No. DA-ITAD 044-11, issued on February 10, 2011 and BIR Ruling No. ITAD-343-12 issued on September 18, 2012 cannot be relied upon by petitioner; (2) Petitioner failed to comply with Revenue Memorandum Order (RMO) No. 1-2000; (3) petitioner has no legal personality to file a case for refund; *c*

[8] En banc Docket, p. 44.

[9] Division Docket , Vol. 3, p.1602.

and (4) there is no erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected merely reiterates petitioner's arguments in her Motion for Reconsideration which had already been considered and found wanting of merit by the Court in Division.

We have carefully perused the petition and find no valid or compelling reason to grant the same. The Court's Division aptly ruled as follows:

> *First, as correctly pointed out by petitioner, respondent advanced an issue that was raised for the first time on appeal. This particularly refers to the issue on petitioner's legal personality to file a refund which was neither raised in the respondent's Answer (with Motion to Dismiss) nor in the Stipulation of Issues. Settled is the rule that "issues not previously ventilated cannot be raised for the first time on appeal" "much less raised in the Motion for Reconsideration of a decision".*
>
> *Second, the claim did not arise from the erroneous application of tax rates involving the tax treaty. The claim for refund arose from the erroneously withheld and remitted tax to the BIR on the excess cash dividend paid in 2009. At any rate, as borne out by the records of this case, petitioner indeed complied with Revenue Memorandum Order (RMO) No. 1-2000, or the Procedures for Processing Tax Treaty Relief Application.*
>
> *In the recent case of CBK Power Company Ltd. vs. Commissioner of Internal Revenue, the Supreme Court resolved that the failure to strictly comply with RMO No. 1-2000 will not deprive the persons or corporations of the benefit of a tax treaty. The High Court stressed that "the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000," and held to wit:*
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>> *"Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a*

> *taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief."*
>
> *The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, non-compliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.*
>
> *The objective of RMO No. 1-2000 in requiring the application for treaty relief with the ITAD before a party's availment of the preferential rate under a tax treaty is to avert the consequences of any erroneous interpretation and/or application of treaty provisions, such as claims for refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment."*

Third, Section 229 of the National Internal Revenue Code of 1997, which governs refund of erroneously or illegally assessed or collected taxes, finds application here since the said provision applies even to overpaid taxes as held in the cases of Collector of Internal Revenue vs. Prieto and Accra Investments Corporation vs. Court of Appeals, where the Supreme Court used the two (2)-year prescriptive period even when the issue involved was overpayment of taxes. The Court emphasizes that "while the taxpayer has an obligation to honestly pay the right taxes, the government has a corollary duty to implement tax laws in good faith; to discharge its duty to collect what is due to it; and to justly return what has been erroneously and excessively given to it."

Furthermore, in the case of CIR vs. Smart Communications, Inc.,[10] citing the case of Commissioner of

[10] G.R. Nos. 179045-46, August 25, 2010

Internal Revenue v. Procter & Gamble Philippines Manufacturing Corporation[11], the right of withholding agent to file a claim for refund is settled to wit:

> *"Pursuant to the foregoing, the person entitled to claim a tax refund is the taxpayer. However, in case the taxpayer does not file a claim for refund, the withholding agent may file the claim.*
>
> *In Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation, a withholding agent was considered a proper party to file a claim for refund of the withheld taxes of its foreign parent company. Pertinent portions of the Decision read:*
>
>> *The term taxpayer is defined in our NIRC as referring to any person subject to tax imposed by the Title [on Tax on Income]. It thus becomes important to note that under Section 53(c) of the NIRC, the withholding agent who is required to deduct and withhold any tax is made personally liable for such tax and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.*
>>
>> *A person liable for tax has been held to be a person subject to tax and properly considered a taxpayer. The terms liable for tax and subject to tax both connote legal obligation or duty to pay a tax.* ***It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made liable for tax as not subject to tax. By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.***

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[11] G.R. No. 66838, December 2, 1991

In Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue, this Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent:

> *The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Governments agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas the Commissioner and his deputies are not made liable by law.*

If, as pointed out in Philippine Guaranty, ***the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim.*** *This implied authority is especially warranted where, as in the instant case, the withholding agent is the wholly owned subsidiary of the parent-stockholder and therefore, at all times, under the effective control of such parent-stockholder. In the circumstances of this case, it seems particularly unreal to deny the implied authority of P&G-Phil. to claim a refund and to commence an action for such refund.*

x x x x

We believe and so hold that, under the circumstances of this case, P&G-Phil. is properly regarded as a taxpayer within the meaning of Section 309, NIRC, and as impliedly authorized to file the claim for refund and the suit to recover such claim. (Emphasis supplied.)"

In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by the evidence on record and is consistent with prevailing law and jurisprudence.

WHEREFORE, the Petition for Review filed by petitioner Commissioner of Internal Revenue is **DENIED,** for lack of merit. Accordingly, the Decision of the Second Division promulgated on March 17, 2015 and Resolution dated July 13, 2015 denying the Motion for Reconsideration for lack of merit, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice