Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LA SUERTE CIGAR AND CIGARETTE FACTORY, TELENGTAN BROTHERS AND SONS, INC.,
Respondent.

CTA EB Case No. 820
(CTA Case No. 7390)

Members:
ACOSTA, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *J.J.*

Promulgated:
JUN 1 1 2012 10:00 a.m.

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review,[1] filed on September 16, 2011 by petitioner- Commissioner of Internal Revenue (CIR), with respondent's Comment (Re: Petition for Review dated 15 September 2011),[2] praying that the portion of the Decision[3] (Assailed Decision) dated April 26, 2011, ordering the refund or issuance of a tax credit certificate to respondent in the amount of P273,165,760.00, representing respondent's erroneously/illegally collected excise tax paid for the

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[1] En Banc Rollo, pp. 10-24.
[2] Ibid, pp. 58-73.
[3] Petition for Review, Annex "A", En Banc Rollo, pp. 25-45.

period January to June 2004 and the Resolution[4] (Assailed Resolution) dated August 12, 2011, affirming the same, be set aside and, another one be entered denying the claim for refund in its entirety.

Petitioner is the duly appointed Commissioner of Internal Revenue, the government official charged with the duty of assessing and collecting internal revenue taxes, as well as the power to cancel disputed assessments, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent- La Suerte Cigar and Cigarette Factory Telengtan Brothers & Sons, Inc., is a corporation duly organized and existing under and by virtue of the laws of the Philippines, doing business under the name and style of La Suerte Cigar and Cigarette Factory, with principal business address at Km. 14, South Super Highway, Parañaque, Metro Manila.[5]

The facts of the case, as found by the CTA Third Division, are as follows:

> "Petitioner (respondent herein) is engaged in the business of manufacturing and marketing tobacco products, such as cigarettes.
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> On January 1, 1997, upon recommendation of the then Commissioner of Internal Revenue, the Secretary of Finance issued RR No. 1-97, prescribing the specific tax method in computing the excise tax on cigars and cigarettes and implementing Section 142 of RA 8240, which was subsequently incorporated in toto as Section 145 of the NIRC of 1997, as amended.
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> RR No. 1-97 classifies brands of cigarettes into: a) duly registered or existing brand of cigarettes; b) new brands; c) variant of a brand, as defined under Section 2 thereof.
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> Pursuant to Section 2 of RR No. 1-97, duly registered or existing brands are: (a) those brands listed under Annex 'D' of the NIRC of 1997, as amended; and (b) all other brands, which are

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[4] Ibid, Annex "B", pp. 47-51.
[5] Id., par. 2, p. 26.

registered with the BIR prior to January 1, 1997, and were not classified by Congress in the said list.

On June 24, 1999, after the survey conducted pursuant to RR No. 1-97, petitioner's new brands, Astro Menthol 100s, Astro Filter King, Astro Menthol King, Memphis Menthol 100s and Memphis Filter King were classified under the P1.00 specific tax, per pack. Thereafter, the said excise tax was automatically increased by 12%, or P1.12 per pack on January 1, 2000, pursuant to Section 145 of the NIRC of 1997, as amended.

Thereafter, on February 17, 2003, upon the recommendation of the then CIR, the Secretary of Finance issued RR No. 9-2003, amending RR No. 1-97, prescribing the manner by which the 'current net retail price' of the new brands of cigars and cigarettes and the variants of new brands of cigars and cigarettes can be established for purposes of determining their respective specific tax classification. RR No. 9-2003 provides for a periodic review and determination of the 'current net retail price' of new brands at an interval of two (2) years.

On August 8, 2003, upon recommendation of the then CIR, the Secretary of Finance issued another regulation, RR No. 22-2003, resulting to the reclassification of petitioner's new brands, Astro Menthol 100s, Astro Filter King, Astro Menthol King, Memphis Menthol 100s and Memphis Filter King, from P1.12/pack to P5.60 per pack excise tax bracket.

On March 14, 2003, petitioner filed a Complaint for Injunction with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, with the Regional Trial Court (RTC) of Parañaque City, Branch 194, docketed as Civil Case No. CV-03-0117, assailing the constitutionality of RR Nos. 9-2003 and 22-2003, in so far as they require the periodic reclassification of new brands for being violative of the uniformity and equal protection clauses of the Constitution.

On July 12, 2004, the RTC of Parañaque City, Branch 194, rendered a Decision declaring, in part, RR Nos. 9-2003 and 22-2003, as unconstitutional. The CIR and Secretary of Finance filed separate Motions for Reconsideration, which were both denied.

Hence, on February 24, 2005, the CIR and Secretary of Finance jointly filed a Petition for Review with the Supreme Court.

While Civil Case No. CV-03-0117 was still pending with the RTC, petitioner had allegedly been paying excise and value-added taxes on the removals of its new brands based on their current net retail price of P5.60 per pack under RR Nos. 9-2003 and 22-2003. Thus, for the period covering the months of January to June 2004, respondent erroneously collected from petitioner the total amount of P297,999,010.84, representing excise and value-added taxes on petitioner's removals of its ATFK, ATMK, MP100 and MPFK brands.

On December 8, 2005, petitioner filed an administrative claim for refund or tax credit with the BIR for the total amount of P297,999,010.84, representing excise and value-added taxes on petitioner's removals of its ATFK, ATMK, MP100 and MPFK brands, covering the period January to June 2004.

In view of the inaction of respondent (petitioner herein), on December 27, 2005, petitioner filed the instant Petition for Review.

In her Answer, respondent alleged by way of special and affirmative defenses that:

> '5. Petitioner's alleged claim for refund is subject to administrative investigation by the Bureau;
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> 6. Petitioner must prove that it paid the excise taxes so alleged;
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> 7. Petitioner must prove that the alleged amount sought to be refunded were erroneously collected by respondent;
>
> 8. Petitioner must prove that the claim was filed within the two (2) year period prescribed in Section 229 of the Tax Code of 1997;
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> 9. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund;

> 10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.'
>
> Petitioner presented Cesar Ong and Katherine Constantino, as witnesses, and documentary evidence, marked as Exhibits 'A' to 'Y20', inclusive of their submarkings, which were all admitted by the Court in the Resolutions dated October 4, 2007 and November 14, 2007.
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> On January 28, 2009, upon motion of petitioner's counsel, respondent was deemed to have waived her right to present evidence for the repeated failure of her counsel to appear for the presentation of her evidence. Thus, the parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the case shall be deemed submitted for decision.
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> However, on March 19, 2009, petitioner filed a 'Motion to Reopen Case' praying that petitioner be allowed to present additional documentary evidence relating to overpayment of VAT for taxable year 2005 and to recall its witness, Katherine Constantino, which the Court granted in a Resolution dated May 21, 2009.
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> Thus, petitioner presented Atty. Susan Resurrecion, Heidi Tiu and Gerald Louis Aquino, as additional witnesses, and additional documentary evidence, marked as Exhibits 'S15-2'to 'N23', inclusive of their submarkings, which were admitted by the Court in a Resolution dated November 17, 2010, except for Exhibit 'O22' for failure of petitioner to submit the same to this Court.
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> Considering petitioner's 'Memorandum' filed on January 28, 2011, and the Report of the Judicial Records Division dated January 12, 2011 that respondent failed to file her memorandum despite notice, the case was deemed submitted for decision on February 8, 2011.

After trial on the merits, the CTA Third Division promulgated a Decision on April 26, 2011, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED to REFUND or ISSUE a TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of **TWO HUNDRED SEVENTY THREE MILLION ONE HUNDRED SIXTY FIVE THOUSAND SEVEN HUNDRED SIXTY PESOS (P273,165,760.00),** representing erroneously/illegally collected excise tax paid for the period January to June 2004.
>
> **SO ORDERED.**"

Not satisfied with the above decision, petitioner filed her Motion for Reconsideration (Re: Decision Promulgated 26 April 2011)[6] on May 16, 2011, which Motion was denied by this Court, for lack of merit, in its Resolution[7] promulgated on August 12, 2011. Hence, petitioner filed the instant Petition for Review, on September 16, 2011 with respondent's Comment (Re: Petition for Review dated 15 September 2011)[8] filed on October 17, 2011.

On October 25, 2011, the Court *En* Banc issued a Resolution[9], ordering both parties to submit their respective memorandum. In compliance therewith, both parties filed their Memoranda[10] on December 2, 2011.

The case was deemed submitted for decision per Resolution[11] promulgated on January 4, 2012.

In her Petition for Review, petitioner raised this sole issue, to wit:

> Whether or not respondent is entitled to P273,165,760.00 as claim for refund or issuance of a tax credit certificate representing erroneously/illegally collected excise tax paid for the period January to June 2004.

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[6] Division Docket (Vol. II), pp. 877-887.
[7] Ibid., pp. 915-919.
[8] En Banc Rollo, pp. 58-73.
[9] Ibid., pp. 82-83.
[10] Petitioner's Memorandum, Id., pp. 84-94 and Respondent's Memorandum, Id., pp. 94-117.
[11] Id., pp. 119-120.

Petitioner contends that the Third Division of the Court of Tax Appeals has no jurisdiction over the original Petition for Review considering that it was filed prematurely, in violation of the doctrine of exhaustion of administrative remedies. Likewise, she stresses that it is incumbent upon respondent to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim.

Respondent, on the other hand, counters that it did not violate the doctrine of exhaustion of administrative remedies; the records of this case would show that it submitted all documents it believed were necessary to support its administrative claim.

After a careful and thorough evaluation and consideration of the records and arguments of both parties, as well as the jurisprudence on the matter, the CTA *En* Banc finds no merit in the instant Petition.

We observed that the arguments that petitioner relied upon for review in the instant petition, are mere reiteration, if not repetition, of the very same arguments she had already raised in her Motion for Reconsideration (Re: Decision Promulgated 26 April 2011) dated May 16, 2011 which had already been fully and exhaustively resolved by the CTA Third Division in this wise:

> To begin with, we find that petitioner La Suerte's claim for refund filed with the BIR has substantially complied with the law. Settled is the rule that the filing of an administrative claim before the Commissioner is a pre-requisite before this Court can take cognizance of the taxpayer's claim for refund. Petitioner La Suerte substantially complied with this requirement on December 8, 2005 attaching thereto documents in support of its claim. Hence, respondent CIR's claim that petitioner La Suerte failed to submit complete documents in support of its claim must necessarily fail as the administrative claim was already filed and it was respondent CIR's duty to inform and require petitioner to submit other evidentiary requirements should she find them insufficient. Further, an examination of the BIR records transmitted to this Court show that respondent CIR was furnished with the same documents, which were attached and

filed together with petitioner La Suerte's instant Petition for Review."

It is worthy of emphasis that in filing administrative protest, it is the petitioner who initially determines the "relevant supporting documents" to be submitted to support the same. Such relevant supporting documents as explained in the case of *Business One, Inc. vs. Commissioner of Internal Revenue,*[12] citing the case of *Standard Chartered Bank-Philippine Branches vs. Commissioner of Internal Revenue,*[13] pertain to "such documents which the taxpayer feels would be necessary to support the protest and not what the respondent feels should be submitted; otherwise, the taxpayer would always be at the mercy of the BIR which may require production of such documents which taxpayer could not produce. Besides, the BIR should inform the taxpayer to submit whatever documents are lacking in order that a complete determination of the propriety of the assessment may be had. Further, this Court reiterated that the requirement on the submission of all the relevant supporting documents within the 60-day period from filing protest is merely directory."

Applying the foregoing to the instant case, *We* affirm the findings of the CTA Third Division that, indeed, respondent had fully substantiated its claim for refund when it attached to its administrative claim, all documents which it deemed necessary to establish its claim. Furthermore, if indeed, petitioner finds the submitted documents to be insufficient, she should have notified and required respondent to submit other evidentiary requirements to determine the veracity of its claim for refund which petitioner failed to do.

In view of the foregoing, this Court finds no cogent reason or overriding justification to disturb the assailed Decision and Resolution of the CTA Third Division.

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[12] C.T.A. Case No. 6832, October 7, 2008.
[13] C.T.A. Case No. 5696, August 16, 2001.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the April 26, 2011 Decision and August 12, 2011 Resolution of the CTA Third Division, are hereby **AFFIRMED *in toto.***

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice