REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1858** (CTA Case No. 8951)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
SARTORIOUS AKETIENGESELLSCHAFT, *Respondent.*	Promulgated: SEP 16 2019 2:45 p.m.

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by the Commissioner of Internal Revenue (CIR) through registered mail on June 7, 2018 and received by this Court on June 13, 2018 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[2], which prays for the reversal and setting aside of the December 8, 2017 *Decision*[3] promulgated by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 8951 entitled "*Sartorious Aketiengesellschaft vs. Commissioner of Internal Revenue.*"

[1] *Rollo*, CTA EB No. 1858, pp. 4-20.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, pp. 22-37.

The dispositive portions of the assailed *Decision* and *Resolution* read:

Decision[4] dated December 8, 2017:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** to petitioner the total amount of **₱1,442,396.04**, representing the capital gains tax and documentary stamp tax it erroneously paid on December 20, 2012.
>
> **SO ORDERED**."

Resolution[5] dated May 2, 2018:

> "**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED**."

The Facts

As culled from the assailed decision, petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

On the other hand, respondent Sartorious Aketiengesellschaft is a non-resident foreign corporation organized and existing under the laws of the Republic of Germany, with principal office address at Weender Landstraße 94-108, 37075 Goettingen, Germany, registered in the commercial register of the local court of Goettingen under HRB 1970.[7]

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[4] *Supra*, Note 3.
[5] *Rollo*, Resolution dated May 2, 2018, pp. 39-42.
[6] *Id.*, Decision dated December 8, 2017, p. 23.
[7] *Id.*, pp. 22-23.

Respondent and Sartorius Weighing Technology GmbH (SWTG) executed a Spin-Off and Take-Over Agreement and an Addendum, whereby respondent agreed to transfer its 10,083 shares of stock in Sartorius Mechatronics Philippines, Inc. (SMPI) in exchange for 1 share of stock of SWTG.[8]

SWTG is a foreign corporation organized and existing under the laws of Germany, with principal office at Weender Landstraße 94-108, 37075 Goettingen, Germany, registered in the commercial register of the local court of Gottingen under HRB 201458. It is the wholly-owned subsidiary of the respondent.[9]

SMPI, on the other hand, is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with SEC Registration No. A200000893. Its principal place of business is at Unit 20A, The World Center Building, 330 Senator Gil Puyat Avenue, Makati City.[10]

On July 19, 2012, respondent filed a Request for Tax Ruling with the BIR for the confirmation of its opinion that the transfer of its shares in SMPI to its wholly-owned subsidiary, SWTG, is not subject to Capital Gains Tax (CGT) pursuant to Section 40(C)(2) of the National Internal Revenue Code of 1997, as amended.[11]

About five months from the filing of the said Request, both respondent and SWTG were required to present their corresponding stock certificates in SWTG and SMPI, respectively. As the Certificate Authorizing Registration (CAR) could not be secured without the BIR's Ruling to allow the corporate secretary of Sartorius Philippines to register the transfer of shares in the Stock and Transfer Book and to subsequently issue the share certificate in the name of SWTG, respondent paid under protest the pertinent CGT in the amount of Php1,379,368.42 and Documentary Stamp Tax (DST) in the amount of Php63,027.62 on December 20, 2012. On the same date, petitioner also filed its letter regarding Payment of Taxes under Protest.[12]

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[8] *Rollo*, Decision dated December 8, 2017, p. 23.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*, pp. 23-24.

On January 9, 2013, the then Revenue District Officer of Revenue District Office (RDO) No. 39, Clavelina S. Nacar, issued the CAR covering the transfer of shares from the respondent to SWTG.[13]

On December 15, 2014, respondent filed its administrative claims for refund of CGT in the amount of Php1,379,368.42 and DST in the amount of Php63,027.62 with the BIR-RDO No. 39, South Quezon City.[14]

In order to comply with the two-year prescriptive period under Section 229 of the NIRC of 1997, as amended, respondent filed a Petition for Review in the Court in Division on December 19, 2014.[15]

In the Resolution dated January 12, 2015, the Court in Division ordered respondent to submit a Secretary's Certificate/Board Resolution showing that Atty. Editha R. Hechanova was authorized to sign the Verification/ Certification for the corporation.[16]

Respondent filed its Compliance/Manifestation on February 2, 2015, stating that the authority granted to Atty. Editha R. Hechanova to execute the Verification/Certification of Non-Forum Shopping is contained in an authenticated Special Power of Attorney (SPA) dated May 10, 2012, copies of which already forms part to the Petition for Review.[17]

In the Resolution dated March 3, 2015, the Court ordered respondent to explain why it should not be cited for contempt for failure to comply with the Resolution dated January 12, 2015 and to submit the required Secretary's Certificate/Board Resolution.[18]

Respondent filed its Compliance on March 31, 2015, submitting the original authenticated Certification/Special Power of Attorney executed by Dr. Joachim Kreuzberg, Chairman of the Board of respondent and Mr. Jens Michael

[13] *Rollo*, Decision dated December 8, 2017, p. 24.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*

Artlet, authorized signatory of respondent, and notarized by Heinz Arend, Notary Public of Gottingen, Germany.[19]

In the Resolution dated May 14, 2015, the Court deemed respondent to have substantially complied with the provision of Section 2 of Rule 42 of the Rules of Court.[20]

After the trial, the Court in Division ruled in favor of respondent in the assailed Decision, hence, petitioner moved for the reconsideration of the same. However, the Court in Division ruled anew in favor of respondent.

On June 7, 2018, petitioner, through registered mail, filed the instant Petition for Review.

On July 9, 2018, this Court directed respondent to file its comment [21] on said petition for review which the latter submitted on September 19, 2018 after the former granted[22] its motion[23] for extension of time to file the same.

On September 27, 2018, this Court declared that the submission of said comment by respondent renders the case submitted for decision.

The Issue

Whether or not the Petition for Review was properly filed by respondent in the Court in Division and entitled to the claim for refund.

Arguments of Petitioner[24]

Petitioner CIR argues that respondent's Petition for Review filed in the Court in Division lacks a proper verification and certification against forum shopping since the signatory, Atty. Editha Hechanova, was not authorized to sign the same in the SPA dated May 10, 2012 and the alleged ratification of said SPA under Certification/SPA dated February 23, 2015 does not exist as there was no authority to ratify, hence, no

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[19] *Rollo*, Decision dated December 8, 2017, pp. 24-25.
[20] *Id.*, p. 25.
[21] *Id.*, Comment (*To the Petition for Review dated 7 June 2018*), pp. 56-73.
[22] *Id.*, Minute Resolution dated September 10, 2018, p. 55.
[23] *Id.*, Motion for Extension of Time to File Comment, pp. 51-53.
[24] *Supra*, Note 1.

valid petition was filed upon the expiration of the two-year prescription period to claim for refund.

Further, petitioner argues that respondent did not comply with the exhaustion of administrative remedies which warrants dismissal of respondent's petition in the Court in Division and that there is no erroneous collection of CGT and DST, hence, it was not entitled to the claim for refund for such must be empirically supported by the respondent and should be strictly construed against it.

Arguments of Respondent[25]

Respondent, in its comment, argues that Atty. Editha Hechanova was authorized to sign the Verification and Certification against Forum Shopping granted in the SPA dated May 10, 2012, as confirmed and ratified in the SPA dated February 23, 2015, hence, the petition for review filed in the Court in Division contained proper and valid verification/certification against forum shopping.

Respondent also argues that the judicial claim for refund was timely filed and it exhausted its administrative remedies prior to the filing of said judicial claim. Respondent avers that it was entitled to said claim for refund as there was an erroneous, illegal, and excessive collections of said CGT and DST, and it sufficiently proven entitlement to such claim.

Ruling of the Court *En Banc*

The main contention posited by petitioner pertains to the effectivity of the SPA dated May 10, 2012 as ratified by SPA dated February 23, 2015 in the filing of the petition for review in the Court in Division on December 19, 2014.

Petitioner is of the belief that Atty. Hechanova was not specifically appointed in the SPA dated May 10, 2012 to sign the verification and certification against forum shopping, hence, there is nothing to be ratified by the SPA dated February 23, 2015. Petitioner is totally mistaken.

A closer look on the records of the case reveals that, in the SPA dated May 10, 2012, [26] the law offices of

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[25] *Supra*, Note 21.

HECHANOVA, BUGAY & VILCHEZ was appointed as respondent's attorney-in-fact and among the acts or deeds that it shall perform include as its legal representative "on whom service of legal process and notices may be served in connection with any action(s) that may be taken by said attorney-in-fact pursuant to the authority herein given," The name of Atty. Hechanova was not specifically stated therein.

However, in the SPA dated February 23, 2015, [27] respondent confirmed and certified that said law firm was appointed as its attorney-in-fact and stated categorically that Atty. Hechanova was among respondent's attorneys-in-fact. Both SPAs were signed by the Chairman of respondent's Executive Board.

Thus, such act of respondent's board through its Chairman is considered a ratification. In *Lopez Realty, Inc. et al. v. Spouses Reynaldo Tanjangco and Maria Luisa Arguelles-Tanjangco,*[28] the Supreme Court explains the nature of such ratification and ruled that it retroacts to the date of the subject of such act, to wit:

> The general rule is that a corporation, through its board of directors, should act in the manner and within the formalities, if any, prescribed by its charter or by the general law. Thus, directors must act as a body in a meeting called pursuant to the law or the corporation's by-laws, otherwise, any action taken therein may be questioned by any objecting director or shareholder.
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> However, the actions taken in such a meeting by the directors or trustees may be ratified expressly or impliedly. "**Ratification means that the principal voluntarily adopts, confirms and gives sanction to some unauthorized act of its agent on its behalf.** It is this voluntary choice, knowingly made, which amounts to a ratification of what was theretofore unauthorized and becomes the authorized act of the party so making the ratification. **The substance of the doctrine is confirmation after conduct, amounting to a substitute for a prior authority**. Ratification can be made either expressly or impliedly. Implied ratification may take various forms — like silence or acquiescence, acts showing approval or adoption of the act, or acceptance and retention of benefits flowing therefrom." (*Emphasis supplied*)

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[26] Docket, CTA Case No. 8951, Special Power of Attorney dated May 10, 2012, pp. 28-31; pp. 113-116.
[27] Docket, CTA Case No. 8951, Special Power of Attorney dated February 23, 2015, pp. 134-136.
[28] G.R. No. 154291, November 12, 2014.

Petitioner should be reminded that respondent and said law firm had entered into a contract of agency[29], hence, it may perform all acts necessary to carry out the appointed action,[30] such as signing the verification and certification against forum shopping to complete the "action taken by the attorney-in-fact."

Moreover, the rule on verification and certification against forum shopping is not strictly applied in the interest of substantial justice. In *Great Southern Maritime Services Corporation et al. v. Jennifer Anne B. Acuña et al.*[31], the liberal interpretation of such rule was sustained by the Supreme Court, which ruled that:

> As regards the verification signed only by respondents' counsel, this procedural lapse could have warranted the outright dismissal of respondents' petition for certiorari before the Court of Appeals. However, it must be remembered that the rules on forum shopping, which were precisely designed to promote and facilitate the orderly administration of justice, **should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective which is the goal of all rules of procedure - that is, to achieve substantial justice as expeditiously as possible.**
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> Needless to stress, rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within our power to suspend the rules or except a particular case from its operation. (*Emphasis supplied*)

In *Allen Leroy Hamilton v. David Levy and Fe Quitangon*,[32] the Supreme Court ruled that when a plaintiff is abroad during the filing of the case, the latter's counsel may sign in behalf of said plaintiff, to wit:

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[29] Art. 1868. By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. (Civil Code of the Philippines)

[30] Art. 1881. The agent must act within the scope of his authority. He may do such acts as may be conducive to the accomplishment of the purpose of the agency.

[31] G.R. No. 140189, February 28, 2005.

[32] G.R. No. 139283, November 15, 2000.

> Rule 7, Section 5 of the 1997 Rules of Civil Procedure clearly provides that the certification must be executed by the principal party, which in this case are respondents David Levy and Fe Quitangon. This is so because the attestation contained in the certification on non-forum shopping requires personal knowledge by the party executing. To merit the Court's consideration, respondents must show good reasons for failure of the proper party to personally sign the certification. They must convince the court that the outright dismissal of the petition would defeat the administration of justice. **In the case at bar, respondents explained that they were both abroad when the petition for certiorari was filed with the Court of Appeals. This is reasonable cause to exempt them from compliance with the requirement that they personally execute the certification**. Moreover, to dismiss their petition for certiorari on this sole ground would deny them the opportunity to question the lack of jurisdiction of the trial court over their persons.

Applying the case by analogy, the fact that respondent is a non-resident foreign corporation which is located abroad and it is the very same reason respondent appointed said law firm to facilitate on its behalf the processing of all its tax and legal requirements in the Philippines, hence, Atty. Hechanova can sign in the petition for review.

In *Gliceria Sarmiento v. Emerita Zaratan*,[33] the Supreme Court ruled that the significance of such rule is that the one signing the verification and certification against forum shopping has the knowledge of the facts alleged in the initiatory pleadings filed in a particular court, to wit:

> **The purpose of requiring a verification is to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings and non-compliance therewith does not necessarily render it fatally defective**. Perusal of the verification in question shows there was sufficient compliance with the requirements of the Rules and the alleged defects are not so material as to justify the dismissal of the petition in the Court of Appeals. The defects are mere typographical errors. There appears to be no intention to circumvent the need for proper verification and certification, which are intended to assure the truthfulness and correctness of the allegations in the petition and to discourage forum shopping. (*Emphasis supplied*)

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[33] G.R. No. 167471, February 05, 2007.

Under paragraph 1(f) and (g) of the SPA dated May 10, 2012, said law firm, where Atty. Hechanova is a partner, is mandated to file the return and pay the tax due for any CGT and DST that respondent may incur in its transaction for the transfer of shares of stock to another entity. Thus, Atty. Hechanova has knowledge in the payment of such CGT and DST as well as the administrative claim for refund initiated by the law firm.

The Court in Division did not err in allowing Atty. Hechanova as signatory in the subject verification and certification against forum shopping.

As to the issue on timely filing of the petition for review in the Court in Division as well as to respondent's entitlement to such claim for refund, this Court will not anymore disturb the factual findings of the Court in Division in the absence of any allegation or indication of abuse or arbitrariness on the part of the latter and said issues were already thoroughly discussed in the assailed decision and resolution.

In *Heirs of Teresita Villanueva et al. v. Heirs of Petronila Syquia Mendoza et al.*,[34] the Supreme Court ruled:

> Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court was in a much better position to determine which party was able to present evidence with greater weight.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed December 8, 2017 *Decision*[35] and May 2, 2018 *Resolution*[36] are hereby **AFFIRMED**.

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[34] G.R. No. 209132, June 05, 2017.
[35] *Supra*, Note 3.
[36] *Supra*, Note 5.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice