REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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SUMISETSU PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 871
(CTA Case No. 7844)

Present :

DEL ROSARIO, PJ.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

Promulgated:

AUG 27 2013 3:50 pm

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R E S O L U T I O N

UY, J.:

For resolution is petitioner's **"MOTION TO WITHDRAW PETITION FOR REVIEW"**[1] filed on May 3, 2013, without respondent's comment despite due notice[2]. In the said motion, petitioner prays for the following reliefs:

> "1. Withdraw the Petition for Review dated February 13, 2012 filed with this Honorable Court;
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> 2. Withdraw the Petition for Review dated October 14, 2008 docketed with the Third Division of this Court as CTA Case No. 7844; and

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[1] Docket, pp. 75-80.
[2] As per Records Verification dated Jully 22, 2013, Docket, p. 84.

3. Dismiss the instant case and consider the same as closed and terminated."

In support of its Motion, petitioner states as follows:

"1. Under Revenue Memorandum Circular No. 49-03, the Respondent and this Honorable Court may act on Sumisetsu's claim for the issuance of a refund or tax credit certificate separately. If the Respondent is able to process the claim of the taxpayer ahead of this Honorable Court, and the taxpayer is amenable to the findings of the Respondent, it may file a motion to withdraw the claim filed with this Honorable Court.

2. The Respondent has approved Sumisetsu's claim for refund or the issuance of tax credit certificate for the excess input Value-Added Tax ("VAT") subject of this instant case. As Sumisetsu is amenable thereto, it is no longer interested in pursuing the instant case.

3. In accordance with Section 2, Rule 17 of the Rules of Court, Sumisetsu most respectfully moves that its Petition for Review be withdrawn, and that the instant case be dismissed and considered as closed and terminated."[3]

THE COURT *EN BANC'S* RULING

In its Motion, petitioner prays for the withdrawal of both the Petition for Review filed before this Court *En Banc* (CTA EB No. 871), as well as the Petition for Review filed with the Third Division of this Court (CTA Case No. 7844), and asks that the instant case be dismissed and considered as closed and terminated. In support thereof, petitioner cites Section 2, Rule 17 of the 1997 Rules of Civil Procedure.

We find petitioner's Motion to Withdraw Petition for Review partly meritorious, only insofar as the instant petition is concerned.

Although the Revised Rules of the Court of Tax Appeals, as amended, the applicable rule in the instant case, does not mention any rule pertaining to the dismissal of an appeal, Section 3, Rule 1 thereof provides that "The Rules of Court in the Philippines shall

[3] Docket, pp. 75 to 76.

apply suppletorily to these Rules" (referring to the Revised Rules of the Court of Tax Appeals).

Relevantly, Section 3, Rule 50 of the 1997 Rules of Civil Procedure, states as follows:

> "SECTION 3. *Withdrawal of appeal.* – An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court."

Based on the foregoing legal provision, an appeal may be withdrawn as a matter of right before the filing of the appellee's brief. In the instant case, respondent did not file the required Comment to the instant Petition for Review despite notice. Likewise, she did not file her Memorandum and this case was considered submitted for decision on September 12, 2012[4]. Thus, it can no longer withdraw its appeal as a matter of right, and the same would now be subject to the sound discretion of this Court.

Considering the manifestation of petitioner in the instant Motion to Withdraw that respondent has approved its claim for refund or the issuance of a tax credit certificate for the excess input Value Added Tax (VAT), and there being no opposition thereto filed by respondent, the Court *En Banc* is inclined to grant petitioner's subject Motion.

It bears stressing however that the withdrawal of the Petition for Review filed before the Court *En Banc* resultantly causes the assailed Decision dated September 6, 2011 issued by the Third Division of this Court in CTA Case No. 7844 to become final and executory.

To reiterate, an appellant who withdraws his appeal must face the consequence of his withdrawal, such as the decision of the court *a quo* becoming final and executory.[5]

As regards petitioner's reliance on the provisions of Revenue Memorandum Circular (RMC) No. 49-03, We find the same misplaced. We quote the pertinent portions of Revenue Memorandum Circular No. 49-03 for easy reference, to wit:

> "In cases where the taxpayer has filed a 'Petition for Review" with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative

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[4] Resolution dated September 12, 2012, Docket, p. 73-74

[5] *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue,* G.R. No. 181371, March 2, 2011, citing *Southwestern University v. Hon. Salvador,* 179 Phil. 252, 257 (1979).

> agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.
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> **If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim**. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite to the release of the tax credit certificate/tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon the initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/processing office." *(Emphasis supplied.)*

Clearly from the foregoing legal provisions, petitioner's prayer for the withdrawal of the Petition for Review filed before the Court in Division in CTA Case No. 7844 finds no basis in RMC No. 49-03 and should be denied for lack of merit.

WHEREFORE, in view of the foregoing considerations, petitioner's "Motion to Withdraw Petition for Review" filed on May 3, 2013 is hereby **PARTIALLY GRANTED.** Accordingly, the instant Petition for Review filed on February 15, 2012 is hereby **DISMISSED,** and the case is hereby declared **CLOSED** and **TERMINATED.**

However, the Motion to Withdraw the Petition for Review dated October 14, 2008 filed in CTA Case No. 7844 is however **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. R-L
MA. BELEN M. RINGPIS-LIBAN
Associate Justice