Republic of the Philippines
Court of Tax Appeals
Quezon City

SECOND DIVISION

SWEDISH MATCH PHILIPPINES, INC.,
Petitioner,

- versus -

THE TREASURER OF THE CITY OF MANILA,
Respondent.

C.T.A. AC NO. 6

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

AUG 0 8 2006

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DECISION

UY, J.:

Petitioner-corporation, Swedish Match Philippines, Inc., filed this petition for review on March 16, 2005 pursuant to Section 9 of Republic Act No. 9282, in relation to Rule 42 of the Rules of Court, seeking the reversal of the Decision of Branch 21 of the Regional Trial Court of Manila, dated June 14, 2004 in Civil Case No. 03-108163, entitled, "Swedish Match Philippines, Inc., vs. The Treasurer of the City of Manila" rendered by the Hon. Amor Reyes, as well as, the Order dated November 10, 2004 denying petitioner's Motion for Reconsideration of the said Decision for lack of merit.

It is further prayed in the instant petition: that respondent be ordered to refund to petitioner the amount of One Hundred Sixty Four Thousand Five Hundred Fifty Two Pesos and Four Centavos (P164,552.04) representing local business taxes paid for the fourth quarter of the year 2001 under Section 21 of the City of Manila's Revenue Code; and, that Ordinance Nos. 7988 and 8011 be declared void for failure to comply with the procedural and substantive rules for their effectivity; and, upon the filing of the instant petition, a Temporary Restraining Order and afterwards, a preliminary injunction, be issued enjoining the respondent and her representative from assessing and collecting taxes from the petitioner pursuant to Section 21 of the Manila Revenue Code; and after trial, a final and permanent injunction be issued.

THE FACTS

Petitioner, Swedish Match Philippines, Inc., is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Phimco Compound, F. Manalo St., Punta, Sta. Ana, Manila. It is engaged in the business of manufacturing disposable gas lighters.

Respondent, the Treasurer of the City of Manila, is the local government official charged with the implementation of the City's Revenue Code, as well as the collection and assessment of business taxes, license fees and permit fees within the City.

Allegedly, petitioner regularly pays the business taxes collected from it by the City of Manila from 1997 until the present time on the basis of Sections 14 and 21 of the Manila Ordinance No. 7794 otherwise known as the Manila

Revenue Code ("MRC"). Section 14 of the MRC imposes tax on manufacturers, assemblers and other processors of articles of commerce, while Section 21 of the same Code imposes tax on businesses subject to excise, value-added or percentage taxes under the National Internal Revenue Code ("NIRC"). The rates had been changed by the amendments to the MRC under Ordinance No. 7988 in the year 2000 and Ordinance No. 8011 in the year 2001.

On October 20, 2001, petitioner allegedly paid business taxes in the amount of P470,932.21. For this payment made, the taxes paid under Section 21 of the MRC allegedly amounted to P164,552.04.[1] Sometime on September 17, 2003, petitioner filed a claim for refund of the business taxes it paid for the fourth quarter of 2001 under Section 21 of the MRC in the amount of P164,552.04 on the ground of double taxation since it already paid business taxes under Section 14 of the same Code. Petitioner also assailed the effectivity of Ordinance Nos. 7988 and 8011 for failure to comply with the requirements set forth under the Local Government Code ("LGC").

The alleged inaction of the respondent on its claim for refund prompted petitioner to file on October 17, 2003, a Petition pursuant to Section 196 of the Local Government Code of 1991, which was a claim for refund of business taxes erroneously assessed and collected under Section 21 of Ordinance No. 7794 before the Regional Trial Court of Manila ("RTC") which was docketed as Civil Case No. 03108163.[2]

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[1] Official Receipt No. 198836, Annex "C", Rollo, p. 39.
[2] Petition, Annex "E", Rollo, pp. 61-73.

On June 14, 2004, the RTC issued a Decision dismissing the Petition for Review on the ground of lack of legal capacity to sue and for failure to establish cause of action.[3] To quote:

> "The petition deserves no merit.
>
> Inasmuch as the petition raises a very serious issue for the same attacks the constitutionality of the questioned provisions, this Court therefore has to be very strict in considering the same because it will be going against the presumption of constitutionality of every law.
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> The Court notes that the present petition is obviously fatally flawed and should be dismissed outright for failure of petitioner to plead its capacity to sue (Atlantic Mutual Ins. Co. v. Cebu Stevedoring Co., Inc. 17 SCRA 1037). Petitioner, being a corporation, may act through its officers, directors and agents but only when the latter have express authority from the corporation itself considering that a corporation has a personality distinct and separate from the persons composing it (Yu v. NLRC, 245 SCRA 134).
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>> 'Absent any showing of interest, therefore, a corporation like plaintiff-appellant herein, has no personality to bring an action for and in behalf of its stockholders or member for the purpose of recovering property which belong to said member in their personal capacities.'
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> Petitioner likewise failed to state the authority of Tiara Batilaran-Beleno, who certified and verified the Petition at bar, to institute the instant suit. Ms. Batilaran-Beleno has no authority, as none was shown, to file the instant petition. The petition at bar failed to aver the facts concerning the capacity to sue of Ms. Batilaran-Beleno in a representative capacity pursuant to Section 4, Rule 8 of the Rules of Civil Procedure which provides that:
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>> 'Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party must be averred. xxx'

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[3] Decision, Annex "A", Rollo, pp. 31-34.

Hence, the present suit states no cause of action, and accordingly dismissible.

WHEREFORE, in view of the foregoing, the instant Petition is hereby DISMISSED for lack of legal capacity to sue on the part of the petitioner and failure to establish a cause of action. Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, June 14, 2004.

(Signed)
AMOR A. REYES
Judge"

The petitioner filed a Motion for Reconsideration of the above Decision on the grounds that:

"I. Petitioner has the capacity to sue since capacity to sue and be sued is inherent in a domestic corporation. This was shown in the petition, and was not denied by respondent.

II. The requirement on pleading capacity to sue applies only to foreign corporation, which petitioner is not, as it is a domestic corporation.

III. Ms. Beleno was not suing on a representative capacity. She was merely instituting the suit on behalf of petitioner as an officer of the corporation, thus, petitioner need not show capacity of Ms. Beleno to sue on a representative capacity.

IV. The issue on whether Ms. Beleno was authorized to institute the petition was an evidentiary matter, which petitioner had intended to prove during the trial. However, with the order of the Honorable Court submitting the case for decision after filing of memoranda, purportedly because the issues are purely legal, an impression was created that the evidentiary facts have all been admitted, including Ms. Beleno's authority to institute the present suit.

V. In a 19 May 2004 Resolution, Ms. Beleno was authorized to institute all petitions for refund, and her authority to institute the instant suit has been ratified by petitioner, which was the only entity which could have repudiated her acts relative to the instant case. As such, any defect, if any, on her authority has been cured.

VI. Even assuming that petitioner had indeed failed to comply with certain formal requirements, the Honorable Court is implored to extend its leniency to petitioner in order not to frustrate the end of substantial justice on technicalities. The Court is also implored to extend the same liberality to petitioner as it had extended to respondent when respondent belatedly filed her Answer, and the same was not verified, nor was it accompanied by any resolution of the City Council stating who was the person authorized to file the Answer and stating said person's authority."[4]

In denying petitioner's Motion for Reconsideration, the RTC did not delve on the above grounds raised by petitioner but proceeded to resolve the case on the merits, to wit:

"Discussing the merits of the petition, the same will also find for the respondent.

Double taxation means taxing the same property twice when it would be taxed only once. It means taxation of the same object or activity twice by the same public authority, within the same jurisdiction or taxing district, for the same purpose in the same year or taxing period (Pepsi Cola Bottling v. Municipality of Tanauan, GR No.:-31156, February 27, 1976; Republic Bank b. *(sic)* CA and Commissioner of Internal Revenue GR No. 62554-55, September 2, 1991).

Thus, the elements of direct double taxation are as follows:

1) taxation twice;
2) same object or activity;
3) by the same public authority;
4) within the same jurisdiction or taxing district;
5) for the same purpose; and
6) in the same year or taxing period.

These elements do not obtain in the case of Secs. 14 and 21 of the City's Revenue Code.

To begin with, the Local Government Code (LGC) specifies the authority of a city such as the City of Manila to impose business taxes as well as the limitations thereon. Sec.

[4] Motion for Reconsideration, Annex "I", Rollo, pp. 138-148.

143 of the LGC establishes the extent of a municipality's authority to impose business taxes. By virtue of Sect. 151 thereof this authority is likewise granted cities *(sic)* such as the City Council of Manila. Section 143 provides:

xxx xxx xxx

Sifting from the above-quoted provisions, it is very clear that the tax imposed upon petitioner under Section 14 is a tax on its business itself while Sec. 21 of the subject Code is in the concept of indirect tax upon end-users of the goods and services of the business not the business establishment itself. In its language, Section 21 specifically levies on "business subject to excise, value added or percentage tax under the National Internal Revenue Code ("NIRC").

These taxes represents *(sic)* additional amounts added by the business establishments to the basic prices of its goods and services which are paid by the end user to them. There *(sic)* are actually not a tax on the business of petitioner but on the end-users of the taxable products.

From the provisions, it is clear that Sections 14 and 21 pertain to different nature of taxes. Sec. 14 is tax on manufacturers, assemblers and other processors, while Sec. 21 is tax on business subject to the excise value added or percentage taxes under the NIRC. In other words the importations under Secs. 14 and 21 of the Manila Revenue Code as amended are not the same kind and character. (Villanueva v. City of Iloilo, 26 SCRA 578)

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit and the dismissal of the petition stands.

SO ORDERED.

Manila, Philippines, June 14, 2004.

(Signed)
AMOR A. REYES
Judge"[5]

Dissatisfied, the petitioner appealed before this Court on March 16, 2005 pursuant to Republic Act No. 9282. Without necessarily giving due

[5] Order, Annex "B", Rollo, pp. 35-38.

course to the instant petition for review, respondent was required to file Comment thereto, in a Resolution promulgated on April 7, 2005. On April 26, 2005, respondent, through counsel, filed his Comment while petitioner filed its Reply thereto on May 13, 2005. After considering the allegations, issues and arguments adduced in the Petition for Review, as well as the Comment thereto, and petitioner's Reply, this court resolved to give due course to the Petition in a Resolution dated July 7, 2005 and the parties were then required to file their respective memorandum. Upon the admission of the parties' respective Memorandum, this case was deemed submitted for decision in the Resolution dated November 29, 2005. Hence, this Decision.

THE ISSUES

The issues for resolution by this Court are as follows:

(1) Whether the imposition of tax under Section 21 of the Manila Revenue Code on petitioner constitutes double taxation in view of taxes already collected from petitioner under Section 14 of the same Code;

(2) Whether Ordinance Nos. 7988 and 8011 violate procedural and substantive rules for their effectivity and implantation;

(3) Whether petitioner is barred from questioning the constitutionality of Section 21 of the Manila Revenue Code, as amended; and

(4) Whether the dismissal by the RTC of the Petition for Refund for stating no cause of action and lack of legal capacity to sue was proper.

THE COURT'S RULING

The first three issues pertain to the merits of this case, while the fourth issue refers to a procedural matter. We deem it proper to first resolve the fourth issue pertaining to the propriety of the dismissal of the petition by the Regional Trial Court.

Petitioner submits that the Regional Trial Court erroneously dismissed the case on the ground of lack of capacity to sue. As a domestic corporation, it is allegedly empowered to sue and be sued in its corporate name in accordance with Section 36(1) of the Corporation Code, and that the requirement in establishing capacity to sue applies only to a foreign corporation and not to a domestic corporation such as itself. Further, as the finance director of the corporation, Tiara Batilaran-Beleno sued in behalf of petitioner. The party suing is the petitioner on its own account and Ms. Batilaran-Beleno did not sue in a representative capacity.

Respondent on the other hand, argues that petitioner, through its officers, directors and agents, may act only with the express authority from the corporation. Ms. Batilaran-Beleno is devoid of any authority to represent the petitioner in the instant case because the Board of Directors did not give consent for her to act in behalf of the corporation. Hence, the case is dismissible.

We find merit in respondent's arguments.

Records show that when the petition before Branch 21 of the Regional Trial Court of Manila docketed as Civil Case No. 03108163 was filed by petitioner on October 17, 2003, a Verification and Certification Against Non-Forum Shopping executed by Tiara Batilaran-Beleno on October 17, 2003 was appended thereto but there was no showing that she has been authorized to execute the same in behalf of petitioner-corporation. Thus, the

Hon. Amor Reyes, Presiding Judge of Branch 21 of the Regional Trial Court of Manila, appropriately dismissed the said petition because petitioner failed to prove the authority of Tiara Batilaran-Beleno (who certified and verified the said petition), to institute said action.

Thereafter, the authority of Tiara Batilaran-Beleno was submitted to the court a quo only when petitioner filed its Motion for Reconsideration on July 29, 2004, alleging, among others, as follows:

> "As already stated, Ms Beleno was acting within her authority when she instituted the filing of the Petition. Not only did petitioner not repudiate her act verifying the Petition and signing Certification Against Forum- shopping, her authority to do so was also ratified by Petitioner in a Board Resolution adopted on 19 May 2004, Annex 'A' hereof, which pertinently states:
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> > ***'RESOLVED, that Tiarra T. Batilaran-Beleno, Finance Director of the Corporation can be authorized, as she is hereby, authorized and empowered to represent, act, negotiate, sign, conclude and deliver, for and in the name of the Corporation, any and all documents for the application, prosecution, defense, arbitration, conciliation, execution, collection, compromise or settlement of all local tax refund cases pertaining to payments made to the City of Manila pursuant to Section 21 of the Manila Revenue Code, as amended;***
> >
> > ***RESOLVED, FURTHER, that Tiarra T. Batilaran-Beleno be authorized to execute Verifications and/or certifications as to Non-Forum Shopping of Complaints/Petitions that may be filed by the Corporation in the above- mentioned tax refund cases,***
> >
> > ***RESOVED, FURTHER, that the previous institution by Tiarra T. Batilaran-Beleno of tax refund cases on behalf of the Corporation, specifically Civil Cases Nos. 01-102074; 03-108163; and 04-109044, all titled "Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila" and pending in the Regional Trial Court of Manila, as well as her execution of the Verifications and/or Certifications as to Non-Forum Shopping in these tax refund cases, are hereby approved and ratified in all respects.'"***[6]

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[6] Motion for Reconsideration, p. 6-7, Rollo, pp. 143-144.

It is evident from the aforequoted Board Resolution that the authority of Ms. Balitaran-Beleno to sign the Verification and Certification Against Non-Forum Shopping, among others, was granted only on May 19, 2004 and nowhere can it be deduced that Tiara Batilaran-Beleno possesses a pre-existing status as an authorized signatory.[7] Inasmuch as the petition before the Regional Trial Court of Manila was filed way back on October 17, 2003, and the authority of Tiara Balitaran-Beleno was granted only on May 19, 2004, the Verification & Certification Against Non-Forum Shopping she executed was undoubtedly invalid.

Although a corporation possesses an inherent power to sue and be sued, being a juridical person, the exercise by a corporation of this power, and all other powers conferred to it by the Corporation Code, is done only through its board of directors and/or duly authorized officers and agents. Generally, the power of the corporation to sue in any court is lodged with the board of directors. The board, in turn, can delegate the physical acts needed to sue, which may be performed only by natural persons, to its attorney-in-fact by a board resolution, if not already authorized under the corporate by-laws[8] or to any duly authorized officers and agents. Thus, a corporation, whether domestic or foreign, being a juridical person, exercises its powers only through natural persons, that is, through its officers, directors and agents, who must be duly authorized by the corporation itself to act for and on its behalf.

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[7] See China Banking corporation vs. Mondragon International Philippines, Inc. and Antonio Gonzales, G.R. No. 164798, November 17, 2005.
[8] BA Savings Bank vs. Sia, G.R. No. 131214, July 27, 2000.

In the case of ***Philippine Airlines, Inc. vs. Flight Attendants and Stewards Association of the Philippines (FASAP)***[9] the Supreme Court held that the required certification of non-forum shopping must be valid at the time of the filing of the petition since a subsequent submission of a Secretary's Certificate that vests authority only after the petition had been filed cannot remedy an invalid certificate. We quote:

> "[W]hen the petitioner is a corporation, the certification should be executed by a natural person. Furthermore, not just any person can be called upon to execute the certification, although such a person may have a personal knowledge of the facts to be attested to.
>
> This Court has explained that a corporation has no power except those conferred on it by the Corporation Code and those that are implied or incidental to its existence. The exercise of these powers is done through the board of directors and/or duly authorized officers and agents. Given these corporate features, the power of the corporation to sue in any court is generally lodged with the board of directors. The board, in turn, can delegate the physical acts needed to sue, which may be performed only by natural persons, to its attorneys-in-fact by a board resolution, if not already authorized under the corporate by-laws.
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> Thus, only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping in behalf of a corporation. In addition, the Court has required that proof of said authority must be attached. Failure to provide a certificate of non-forum shopping is sufficient ground to dismiss the petition. Likewise, the petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority.
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> xxx xxx xxx
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> This Court has allowed the reinstatement of petitions that were dismissed due to lack of proof of authority to sign the certification upon its subsequent submission, saying that this amounted to substantial compliance. The rationale was that the signatories, at the time of execution of the certification, were in

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9 G.R. No. 143088, January 24, 2006.

> fact authorized to sign, although proof of their authority was lacking.
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> This is not what happened in this case. A perusal of the Secretary's Certificate submitted reveals that the authority to cause the filing of the petition was granted on February 15, 2000. The petition, on the other hand, was filed on January 24, 2000. This means that at the time the certification was signed, Cesar R. Lamberte and Susan Del Carmen were not in representation of PAL. This effectively translates to a petition that was filed without a certification at all as none was issued by PAL, the principal party to the case.
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> The required certification of non-forum shopping must be valid at the time of filing of the petition. An invalid certificate cannot be remedied by the subsequent submission of a Secretary's Certificate that vests authority only after the petition has been filed."

Clearly, the prevailing circumstances in the instant case are very much similar with the situations discussed in the aforequoted Philippine Airlines case. To reiterate, when the petition for review was filed with the Regional Trial Court of Manila on October 17, 2003 and the Verification and Certification Against Non-Forum Shopping was executed by petitioner's Finance Manager, Tiara Batilaran-Beleno, on even date, there was no showing that she possessed the appropriate corporate authority to act for and on behalf of petitioner in the filing of said petition. This means therefore that on October 17, 2003, Ms. Batilaran-Beleno was not acting in representation of petitioner-corporation. Consequently, We can consider the petition for review filed in Civil Case No. 03-108163 similar to a petition filed without a verification and certification of non-forum shopping.

The subsequent issuance of the Board Resolution on May 19, 2004, giving corporate authority to Tiara Batilaran-Beleno, evidenced by the Secretary's Certificate dated July 28, 2004 executed by petitioner's corporate secretary, Rafael E. Khan, and submitted to the court a quo together with petitioner's Motion for Reconsideration on July 29, 2004, cannot validate the invalid Certification of Non-Forum Shopping of Ms Batilaran-Beleno, because validity can only translate to the time the authority was given, as enunciated in the Philippine Airlines case.

Therefore, the dismissal by the court a quo of Civil Case No. 03-108163 was proper. The resolution of the other issues raised in the instant petition now becomes unnecessary.

WHEREFORE, the Petition for Review is hereby ***DISMISSED*** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

OLGA PALANCA-ENRIQUEZ
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.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman'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.

ERNESTO D. ACOSTA
Presiding Justice