REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BRITISH AMERICAN TOBACCO (PHILIPPINES), LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **9998**

Members:

CASTAÑEDA, JR., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
FEB 07 2022 2:45 pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner British American Tobacco (Philippines), Limited's (**petitioner**'s) "Omnibus Motion 1. For Reconsideration and 2. For New Trial"[1] (**Omnibus Motion**) filed on 16 July 2021. On 26 October 2021, respondent Commissioner of Internal Revenue (**respondent**) filed his "Comment/Opposition Re: Petitioner's Motion for Reconsideration and for New Trial".

In the Omnibus Motion, particularly in its prayer for reconsideration, petitioner prays for the reversal of this Court's Decision[2] dated 28 June 2021 (**assailed Decision**) in the above-captioned case. The dispositive portion of the assailed Decision reads:

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[1] Division Docket, Volume III, pp. 1407-1420.
[2] Id., pp. 1391-1406.

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review filed by petitioner British American Tobacco (Philippines), Limited on 21 December 2018 is hereby **DENIED** for lack of merit.
>
> **SO ODERED.**
>
> ...

In the alternative, petitioner prays that the assailed Decision be abandoned and the proceedings be re-opened due to an alleged newly-discovered evidence. Relative thereto, petitioner attaches a copy of its Certificate of No Outstanding Tax Liability (**Tax Clearance**) issued by the Bureau of Internal Revenue (**BIR**) and a Certificate of Withdrawal of License of a Foreign Corporation (**Certificate of Withdrawal**) from the Securities and Exchange Commission (**SEC**).

It can be recalled that the Court denied petitioner's petition for refund of the aggregate amount of ₱305,823,304.00, representing excise taxes prepaid by petitioner during the period 29 December 2016 to 18 May 2017 on internal revenue stamps requisitioned through the BIR's Internal Revenue Stamp Integrated System (**IRSIS**). In the assailed Decision, this Court ruled that:

> ...
>
> Indeed, it is mandatory for a taxpayer contemplating dissolution with advance deposits of excise taxes in the IRSIS to comply with the requirements above-mentioned, particularly securing a BIR Certificate of Tax Clearance as a condition for entitlement to a tax refund. Unfortunately, petitioner has yet to comply with this requirement.
>
> While it is true that petitioner was able to file with the BIR an application for cancellation of its BIR registration due to dissolution, petitioner has not presented a Certificate of Tax Clearance to evince that it has been cleared of, and/or has settled its tax liabilities.
>
> In line with the foregoing disquisitions, absent a Certificate of Tax Clearance from the BIR, the Court cannot consider petitioner as already dissolved to remove it from the application of the irrevocability rule under Section 76 of the NIRC of 1997.
>
> It bears noting that in petitioner's Application for Cancellation of Registration/TIN, it has yet to submit the unused invoices and receipts, which is among the documentary requirements for the cancellation of a TIN/registration as provided under Part VI, Annex A of RR No. 7-2012.

> RR No. 7-2012 explicitly defines "*Ceased/Dissolved*" as "*to the status of a registered taxpayer* ***who has completed the requirements for cancellation of registration*** *prior to the termination of audit.*" Hence, even under RR No. 7-2012, petitioner cannot be considered as dissolved or ceased.[3]
>
> ...

The Court's conclusions were reached by applying pertinent provisions of the Corporation Code, the National Internal Revenue Code (**NIRC**) of 1997, as amended, relevant tax regulations, and jurisprudence.

In further support of its prayer for reconsideration of the assailed Decision, petitioner argues that the Court misapplied the case of *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*[4] (**Acesite**), where the Supreme Court held that "there is erroneous payment of taxes when a taxpayer pays under a mistake of fact, as for the instance in a case where he is not aware of an existing exemption in his favor at the time the payment was made".

Petitioner also claims that the Court erred when it considered its excise taxes neither erroneously paid nor illegally collected. According to petitioner, in the cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*[5] (**San Roque**) and *UST Cooperative Store v. The City of Manila, et al.*[6] (**UST Cooperative**), the Supreme Court considered payments under a "mistaken supposition of the existence of a specific fact" and where the tax is not "legally due".

Petitioner also contends that this Court's ruling is inconsistent with its previous decisions, particularly, in *Hewlett-Packard Philippines Corporation v. Commissioner of Internal Revenue*[7] (**Hewlett-Packard**) and *University of Santo Tomas Hospital, Inc. v. Commissioner of Internal Revenue*[8] (**UST Hospital**).

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3 Id., pp. 1403-1404; Citations omitted and emphasis and italics in the original text.
4 545 Phil. 1 (2007).
5 G.R. No. 187485, 12 February 2013.
6 G.R. No. L-17133, 31 December 1965.
7 CTA Case No. 7756, 06 August 2009.
8 CTA Case No. 7919, 20 May 2010.

As earlier stated, petitioner also seeks to avail itself of the benefit of a new trial. It alleges that the BIR had already issued its Tax Clearance on 29 July 2020 and a Certificate of Withdrawal on 16 June 2021 from the SEC. Copies of both documents have been attached to the instant motion. Since petitioner only received both documents after the termination of trial, it claims that documents should be considered "newly-discovered evidence" which would materially affect the Court's decision.

We resolve.

As regards petitioner's prayer for reconsideration, petitioner appears to have lost sight of the actual reason for the denial of its petition when it insistently forwards the argument that its payments were either mistakenly paid or illegally collected. Unfortunately, We remain unconvinced.

The Court's discussions on the proper grounds for a claim for refund notwithstanding, petitioner's case was denied mostly on the ground that its claim was premature since it was not yet considered dissolved for tax purposes when it filed its claim before the Court.

Petitioner's claim for refund of its taxes in the IRSIS is hinged on its insistence that it was no longer operational therefore negating any possibility of incurring excise taxes. However, petitioner failed to submit any evidence to prove that its business was indeed already dissolved in accordance with law. Thus, We held:

> ...
> As discussed above, it would appear that petitioner failed to sufficiently prove that it is entitled to a refund of its prepaid excise taxes, given that there is no showing that it has satisfactorily complied with the legal requirements to effect its dissolution. Similarly, as regards its refund claim on the value of its bad orders and spoiled stamps, the Court finds nothing in the records that could support its argument that the BIR erroneously or illegally collected the taxes paid thereon.
> ...

Aside from failing to support its argument for the refund of the value of its bad orders and spoiled stamps, petitioner likewise did not submit a Tax Clearance from the BIR to show that it no longer had any tax liabilities (which could be accounted for with its advance payments in the IRSIS). As the Court finds, in order for petitioner to be considered dissolved, it must comply with with Sections 52(C) and 235(e) of the NIRC of 1997, as amended, which state:

> ...
> **SEC. 52.** *Corporation Returns.* —
>
> ...
> (C) *Return of Corporation Contemplating Dissolution or Reorganization.* — Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission; or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.
>
> The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **secure a certificate of tax clearance from the Bureau of Internal Revenue** which certificate shall be submitted to the Securities and Exchange Commission.[9]
>
> ...
>
> **SEC. 235.** *Preservation of Books and Accounts and Other Accounting Records.* — ...
>
> ...
> (e) ...All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned. Corporations and partnerships contemplating dissolution must notify the Commissioner and **shall not be dissolved until cleared of any tax liability.**[10]
> ...

[9] Emphasis supplied.
[10] Emphasis supplied.

Only after compliance with the foregoing can petitioner withdraw its license in accordance with Section 136 of Batas Pambansa Blg. 68 (**The Corporation Code of the Philippines**) which provides:

> ...
> **SEC. 136.** *Withdrawal of Foreign Corporations.* — Subject to existing laws and regulations, a foreign corporation licensed to transact business in the Philippines may be allowed to withdraw from the Philippines by **filing a petition for withdrawal of license**. No certificate of withdrawal shall be issued by the Securities and Exchange Commission unless all the following requirements are met:
>
> 1. All claims which have accrued in the Philippines have been paid, compromised or settled;
>
> 2. **All taxes, imposts, assessments, and penalties, if any, lawfully due to the Philippine Government or any of its agencies or political subdivisions have been paid**; and
>
> 3. The petition for withdrawal of license has been published once a week for three (3) consecutive weeks in a newspaper of general circulation in the Philippines.[11]
>
> ...

Verily, petitioner's cause of action would only arise if, despite compliance with the above requirements, respondent continuously withheld said taxes. In such case, this Court could have considered the deposits of petitioner in the IRSIS to be illegally collected. However, this is not the case.

The records show that petitioner filed an administrative claim for excise tax refund with the BIR Excise Large Taxpayers Audit Division II (**ELTAD II**) on 22 June 2018 and its judicial claim for refund before the Court on 21 December 2018.[12] It did not show though that it was already cleared of tax deficiencies prior to instituting its claim.

Given that at the time the refund was claimed, neither of the circumstance in *Acesite*, *UST Cooperative*, or *San Roque* were present, the Court then had no basis to grant the refund claimed.

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11 Emphasis supplied.

12 Petition for Review filed on 21 December 2018, Division Docket, Volume I, pp. 10-19.

The same could be said with the cases of *Hewlett-Packard* and *UST Hospital* that petitioner cited. Besides, the decisions of this Court, either acting in division or sitting *en banc*, are not binding. It is elementary that only the Supreme Court's decisions form part of the law pursuant to Article 8[13] of the Civil Code.

All told, the Court does not find any cogent reason to abandon the assailed Decision as it finds the same to be consistent and not repugnant to the principles established in the afore-cited cases.

As for petitioner's prayer for a new trial, We find Section 1, Rule 37 of the Rules of Court (**ROC**) most relevant, it reads:

> ...
>
> RULE 37
>
> New Trial or Reconsiderations
>
> Section 1. *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
>
> (a) **Fraud, accident, mistake or excusable negligence** which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) **Newly discovered evidence**, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.[14]
>
> ...

In *A. Rafael C. Dinglasan, Jr. v. Hon. Court of Appeals, et al.*[15] (**Dinglasan**), the Supreme Court citing the "Berry Rule" established in *Berry v. State of Georgia*[16] held, thus:

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13 ...
Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.
...

14 Emphasis supplied.

15 G.R. No. 145420, 19 September 2006.

16 10 Ga. 511 (1851).

> ...
> Applications for new trial on account of newly discovered evidence, are not favored by the Courts. x x x Upon the following points there seems to be a pretty general concurrence of authority, viz; that it is incumbent on a party who asks for a new trial, on the ground of newly discovered evidence, to satisfy the Court, 1st. That the evidence has come to his knowledge since the trial. 2d. That it was not owing to the want of due diligence that it did not come sooner. 3d. That it is so material that it would produce a different verdict, if the new trial were granted. 4th. That it is not cumulative only - viz; speaking to facts, in relation to which there was evidence on the trial. 5th. That the affidavit of the witness himself should be produced, or its absence accounted for. And 6th, a new trial will not be granted, if the only object of the testimony is to impeach the character or credit of a witness.
> ...

Dinglasan further provides:

> ...
> The threshold question in resolving a motion for new trial based on newly discovered evidence is whether the proffered evidence is in fact a "newly discovered evidence which could not have been discovered by due diligence." The question of whether evidence is newly discovered has two aspects: a temporal one, *i.e.*, when was the evidence discovered, and a predictive one, *i.e.*, when should or could it have been discovered.[17]
> ...

While *Dinglasan* speaks of a criminal case, the "Berry Rule" applied therein is nevertheless applicable herein and in cases where courts are confronted with the issue of a newly-discovered evidence for purposes of a new trial.

A review of the records would show that petitioner filed an Application for Cancellation of Registration[18] with BIR Form No. 1905[19] to the BIR as early as 30 July 2018 or almost five (5) months prior to the filing of its judicial claim for refund. However, it was only on <u>29 July 2020</u> that the BIR allegedly issued petitioner's Tax Clearance declaring it free from any further tax liabilities. During such time, trial had already been terminated and as of <u>07 July 2020</u>, petitioner's case had

17 Citation omitted.
18 Exhibit "P-7", Division Docket, Volume II, pp. 803-804.
19 Exhibit "P-7-1", id., pp. 853-854.

already been submitted for decision. Subsequently, after being cleared of any deficiency taxes, petitioner appears to have been issued a Certificate of Withdrawal by the SEC.

Applying the "Berry Rule" in *Dinglasan*, the Court finds the evidence sought to be admitted by petitioner to be within the ambit of a newly-discovered evidence.

First, such documents only came to petitioner after trial. *Second*, its failure to produce the evidence during the trial could not be attributed to petitioner who already sought the cancellation of its registration with BIR prior to filing the case (but it was only after trial that the BIR cleared it of tax deficiencies). *Third*, these documents are material and proving their veracity would affect its case's outcome. *Fourth*, the documents are also not cumulative in relation to other evidence offered by petitioner as these documents seek to prove an aspect of the controversy, not supported by any other evidence on record. *Fifth*, petitioner seeks to present the testimony of Joan Ventanilla to attest the circumstances leading to the procurement of these documents. *Sixth*, such testimony is not aimed at discrediting a previous witness.

As previously mentioned, petitioner already applied for the cancellation of its registration even prior to pursuing its judicial claim for refund. After its application, the actual cancellation of its registration rested solely on respondent who has the authority to approve or deny it. The fact that petitioner had not been able to cancel its registration even after trial could not be attributed to its failure or negligence, as petitioner had no control over the same.

WHEREFORE, the foregoing considered, petitioner's Omnibus Motion filed on 16 July 2021 is **PARTIALLY GRANTED.** Accordingly, petitioner's Motion for Reconsideration, contained in the Omnibus Motion, is **DENIED** for lack of merit. On the other hand, petitioner's Motion for New Trial, also contained in the Omnibus Motion, is hereby **GRANTED**. Consequently, this Court's Decision dated 28 June 2021 in the above-captioned is **WITHDRAWN** and **SET ASIDE**.

With trial anew, let a hearing be **SET** on **21 February 2022 at 9:00 a.m.** for the presentation of petitioner's witness. Likewise, petitioner is **ORDERED** to submit a copy of its witness' judicial affidavit five (5) days prior to the date of the hearing.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

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

LANEE S. CUI-DAVID
Associate Justice