REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SWEDISH MATCH PHILIPPINES, INC.,
Petitioner,

-versus-

THE TREASURER OF THE CITY OF MANILA,
Respondent.

C.T.A. EB No. 241
(C.T.A. AC No. 6)

Members:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

Promulgated:
OCT 0 1 2007 [signature]

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DECISION

CASTAÑEDA, Jr., *J.:*

Statement of the Case

Before Us is a petition for review *en banc* assailing the decision and the resolution promulgated by the Second Division of this Court (Court in Division) on August 8, 2006 and November 27, 2006, respectively, in C.T.A. CASE entitled *"Swedish Match Philippines, Inc.*

vs. The Treasurer of the City of Manila" and docketed as C.T.A. AC No. 6.

The dispositive portion of the assailed decision reads:

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

Likewise, the dispositive portion of the assailed resolution provides:

> **WHEREFORE**, the Motion is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

Statement of the Facts

As found by the Court in Division, the following are the facts of this case:

> 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.
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> 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.
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> 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.
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> 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

[1] Official Receipt No. 198836, Annex "C", Rollo, p. 39.

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]

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.'
>
> 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:
>
> > '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'
>
> 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.

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2 Petition, Annex "E", Rollo, pp. 61-73.
3 Decision, Annex "A", Rollo, pp. 31-34.

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]

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

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. 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 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. xxx

On August 8, 2006, the Court in Division promulgated the assailed decision.

On November 27, 2006, the Court in Division denied petitioner's "Motion for Reconsideration."

Petitioner, filed this petition for review *en banc* on December 22, 2006. No comment was filed by respondent.

Hence, this case for decision.

STATEMENT OF THE ISSUE

WHETHER OR NOT THE HONORABLE COURT OF TAX APPEALS, SECOND DIVISION, ERRED WHEN IT HELD THAT MS. BELENO DID NOT HAVE THE AUTHORITY TO FILE THE PETITION BEFORE THE REGIONAL TRIAL COURT, AND DENIED THE PETITION FOR REVIEW.

Petitioner alleges that the petition should be granted on the following grounds: *ja*

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

I. The enforcement of Section 21 of the City of Manila's Revenue Code against petitioner Swedish Match constitutes double taxation prohibited by law in view of taxes collected by the city and paid by petitioner under Section 14 of the Revenue Code;

II. Ordinance Nos. 7988 and 8011 amending the City's Revenue Code have been declared null and void by the Supreme Court in Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, et al., G.R. No. 156252; thus, all taxes collected by the City and paid by petitioner on the basis of these ordinances should likewise be refunded, and

III. The petition for review should not have been denied considering that Ms. Beleno acted within her authority, which was ratified by petitioner corporation which, to begin with was the only entity that could have repudiated her act.

THIS COURT'S RULING

We deny the petition.

A perusal of the issue and arguments of petitioner reveal that these were already considered by the Court in Division in the assailed decision and resolution. *gr*

Swedish Match alleges that Ms. Beleno was authorized on behalf of the corporation to verify the Petition and to sign the Certification of Non-Forum Shopping. Swedish Match further alleges that by virtue of the Board Resolution adopted on May 19, 2004, any defect in Ms. Beleno's authority was cured and all her acts were ratified.

On the other hand, the Court in division dismissed for lack of merit the petition for review of Swedish Match on the ground that the signatory of the certification of non-forum shopping was not authorized at the time the initiatory pleading was filed in the RTC.

We find that the Court in division did not err in dismissing the case.

The certification of non-forum shopping is required as provided in Section 5 of Rule 7 of the 1997 Rules of Civil Procedure, as follows:

> "*Sec. 5. Certification against forum shopping.*—The **plaintiff or principal party shall** certify under oath in the complaint or other **initiatory pleading** asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> **Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading** but shall be **cause for the dismissal of the case** without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions." *(Emphasis Supplied)* gr

It bears stressing that the Rule distinctly provides that the required certification against forum shopping is intended to cover an "**initiatory** pleading," meaning an "**incipient** application of a party asserting a claim for relief."[6] The Rule likewise provides that it is the plaintiff or principal party who shall certify under oath. It is basic in statutory construction that the word "shall" means mandatory. It is also clear that the effect of non-compliance with the requirements is a cause for the dismissal of the case.

The Supreme Court case of *Philippine Airlines, Inc. vs. Flight Attendants and Stewards Association of the Philippines (FASAP)*[7] categorically ruled that the " xxx 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 had been filed." Pertinent portion of which is likewise quoted:

> Xxx When 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 personal knowledge of the facts to be attested to.
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> 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 a 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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6 *Spouses Rudolfo Carpio & Remedios Orendain vs. Rural Bank of Sto. Tomas (Batangas), Inc.*, G.R. No. 153171, May 4, 2006 quoting *Santo Tomas University Hospital v. Surla*, G.R. No. 129718, August 17, 1998, 294 SCRA 382, 391.

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

> 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
>
> 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 fact authorized to sign, although proof of their authority was lacking.
>
> 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 and was dismissed by the Court of Appeals on January 31, 2000. This means that at the time the certification was signed, Cesar R. Lamberte and Susan Del Carmen were not duly authorized by the Board of Directors of PAL and, consequently, their signing and attestations 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.

Based on the PAL case, it is ,therefore, required that the proof of the authority of an individual acting in behalf of a corporation must be attached in the certificate of non-forum shopping at the time the petition is filed.

Thus, We adopt the ruling of the Court in Division and We quote:

> 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.

In this case, the plaintiff is the Swedish Match Philippines, Inc. However, as found by the RTC as well as the Court in Division, the signatory of the verification and/or certification of non-forum shopping is Ms. Beleno, the company's Finance Manager, and that there was no board resolution or secretary's certificate showing proof of Ms. Beleno's authority in acting in behalf of the corporation at the time the initiatory pleading was filed in the RTC. It is, therefore, correct that the case be dismissed.

WHEREFORE, premises considered, the petition for review is hereby **DENIED**. Accordingly, the assailed Decision and the Resolution dated August 8, 2006 and November 27, 2006, respectively, are hereby **AFFIRMED *in toto*.**

SO ORDERED.

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

We concur:

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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