REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL THIRD DIVISION

BARRIO FIESTA MANUFACTURING CORPORATION,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9871

Present:

RINGPIS-LIBAN, *Chairperson*,
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:

AUG 22 2024
3:15 p.m.

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RESOLUTION

FERRER-FLORES, J.:

Before this Court is respondent's **Motion for Reconsideration** filed on March 22, 2024, with petitioner's **Comment (To Respondent's Motion for Reconsideration dated March 21, 2024)** filed on May 13, 2024.

In the Decision dated March 1, 2024 (assailed Decision), the Court, after determining that petitioner is not liable to pay deficiency VAT since its creditable input tax exceeds the output tax due, set aside the deficiency value-added tax (VAT) assessment against petitioner for the first and second quarters of calendar year (CY) 2015, the dispositive portion of which reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the revised *Formal Letter of Demand* and the *Assessment Notice* No. 37135, both issued on December 7, 2017, holding petitioner liable for deficiency VAT in the amount of ₱20,587,742.46, inclusive of interest and compromise penalty, for the period January 1, 2015 to June 30, 2015, are hereby **CANCELLED** and **WITHDRAWN**.

Consequently, the *Preliminary Collection Letter*, dated May 18, 2018, and the *Final Notice Before Seizure*, dated June 8, 2018, as well as the *Warrants of Garnishment*, both dated February 10, 2021, are likewise **CANCELLED** and **WITHDRAWN**.

Respondent Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of deficiency VAT assessed against Barrio Fiesta Manufacturing Corporation arising from the revised *Formal Letter of Demand* and the *Assessment Notice* No. 37135, both issued on December 7, 2017.

SO ORDERED.

In his *Motion*, respondent implores for the assailed Decision to be reconsidered for being premature based on the following assignment of errors, viz.:

I. The Court erred when it ruled that the tax liability sought to be collected against the petitioner for VAT assessment covering the amount of ₱20,587,742.46, inclusive of interest and compromise penalty, for the period January 1, 2015 to June 30, 2015 is not yet delinquent since the assessment has not become final and executory; and,

II. The Court erred when it proceeded to render a Decision dated March 1, 2024 relative to this case despite the fact that the petitioner has pending *Motion to Reopen Proceedings (with Motion to defer Filing of Memorandum),* which became the subject of *Petition for Certiorari* filed before the Supreme Court, seeking the nullification of this Court's Resolution dated June 23, 2023, hence, the petitioner has not yet officially rested its case and the *Petition for Review* should not have been yet submitted for decision as in fact the petitioner has not yet submitted their *Petition for Review* for decision due to incident still pending in the Supreme Court.

As to the *first* ground, respondent claims that the *revised Formal Letter of Demand with Assessment Notice (FLD/FAN) No. 37135* dated December 7, 2017 was already final, executory and demandable for petitioner's failure to submit the necessary and relevant documents in support of its *Protest with Request for Reinvestigation*. Respondent expounds that, when the docket was remanded for reinvestigation to the VAT Audit Section, Assessment Division, petitioner was given sixty (60) days within which to submit all pertinent documents in support of its request. Petitioner, however, allegedly failed to submit all the required pertinent documents within the said period thereby making its VAT liability final, executory and demandable.

Anent the *second* ground, respondent asserts that it is premature for the Court to promulgate a decision while the petitioner is still seeking affirmative relief and has yet to officially rest its case. Considering the pending *Petition for Certiorari* filed by petitioner before the Supreme Court on May 5, 2023, petitioner is clearly not yet ready, willing, and able to submit this case for decision as it is still awaiting affirmative relief from the Supreme Court. He continues that to hold otherwise would mean that the said *Petition for Certiorari* would be a useless scrap of paper as petitioner's prayer therein would be rendered moot and academic.

On the other hand in its *Comment*, petitioner claims that when it received the revised *FLD* from respondent on December 7, 2017, it subsequently filed a second *Request for Reinvestigation* dated January 8, 2018 which was received by respondent on the same day. Petitioner avers that the said second *Request for Reinvestigation* included copies of documents and schedules in support thereof. Respondent, however, utterly failed to resolve the same and instead erroneously considered the assessment as final. Nonetheless, petitioner submits that, since the *Final Notice Before Seizure* (FNBS) contains respondent's final determination of its alleged deficiency taxes, petitioner had thirty (30) days from receipt thereof on June 25, 2018, or until July 25, 2018, within which to appeal the same. Thus, by timely filing the present *Petition for Review* on July 9, 2018, respondent's VAT assessment did not become final, executory and demandable.

Moreover, petitioner also points out that, under Rule 65 of the Revised Rules of Court, the filing of a petition for *Certiorari* "shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case; unlike an appeal, a pending petition for *certiorari* shall not stay the judgment or order that it assails." As such, since there was no temporary restraining order or a writ of preliminary injunction requested by petitioner, the act of filing a petition for *certiorari* before the Supreme Court did not and should not interrupt the proceeding for the main case before this Court.

After due consideration, the Court finds respondent's *Motion for Reconsideration* bereft of merit.

In respondent's *first* assignment of error, he asserts that petitioner's VAT liability should be considered final, executory and demandable since petitioner failed to submit relevant supporting documents within sixty (60) days from the filing of protest.

The Court finds respondent's assertion untenable.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, states that an assessment may be protested by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment by the taxpayer. Within sixty (60) days from filing the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final. The pertinent portion of Section 228 provides:

> SEC. 228. **Protesting of Assessment.** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within the period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.** *(Emphasis supplied)*

In relation thereto, in *Commissioner of Internal Revenue vs. First Express Pawnshop Co., Inc.*,[1] the Supreme Court rejected the argument of the CIR (petitioner therein) that the assessment has become final and unappealable for failure of the taxpayer (respondent therein) to submit the relevant supporting documents to its request for reinvestigation, we quote:

> In this case, respondent received the tax assessment on 3 January 2002 and it had until 2 February 2002 to submit its protest. On 1 February 2002, respondent submitted its protest and attached the GIS and Balance

[1] *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, G.R. No. 172045-46, June 16, 2009.

> Sheet as of 31 December 1998. Respondent explained that it received P800,000 as a deposit with the possibility of applying the same as payment for the future issuance of capital stock.
>
> Within 60 days from the filing of protest or until 2 April 2002, respondent should submit relevant supporting documents. **Respondent, having submitted the supporting documents <u>together with its protest</u>, did not present additional documents anymore.**
>
> In a letter dated 12 March 2002, petitioner requested respondent to present proof of payment of DST on subscription. In a letter-reply, respondent stated that it could not produce any proof of DST payment because it was not required to pay DST under the law considering that the deposit on subscription was an advance made by its stockholders for future subscription, and no stock certificates were issued.
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> **Since respondent has not allegedly submitted any relevant supporting documents, petitioner now claims that the assessment has become final, executory and demandable, hence, unappealable.**
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> **We reject petitioner's view that the assessment has become final and unappealable.** It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.
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> **The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted.** Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit. *(Emphasis and underscoring supplied)*

Applying the foregoing to the present case, petitioner herein received the revised *FLD* on December 7, 2017 and, thus, had until January 6, 2018 to protest the same. Considering that January 6, 2018 fell on a Saturday, the reglementary period extended to January 8, 2018, the next working day.[2] On January 8, 2018, petitioner submitted its protest in the form of a request for reinvestigation and <u>attached thereto the relevant supporting documents</u> (i.e., sales invoices, list of zero-rated sales, and other supporting documents). Accordingly, by submitting its supporting documents on the same day it filed the protest, petitioner has evidently complied with the requisites in disputing an assessment in accordance with the laws, rules and regulations, and jurisprudence cited herein.

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[2] Pursuant to Section 28, Chapter VII, Book I of the Administrative Code of 1987 (Executive Order No. 292).

Verily, the timely filing of the *Request for Reinvestigation* and *Petition for Review* prevented the subject assessment from attaining finality.

With regard to respondent's *second* assignment of error, he posits that it was erroneous for the Court to proceed with the case, and eventually render judgment, given the pendency of petitioner's *Petition for Certiorari* before the Supreme Court.

The Court does not agree.

In the case of *Juan Trajano a.k.a. Johnny Trajano vs. Uniwide Sales Warehouse Club,*[3] the Supreme Court had the opportunity to discuss the rule that the mere pendency of a special civil action for *certiorari,* commenced in relation to a case pending before a lower court, does not automatically interrupt the proceedings in the lower court. A petition for *certiorari* does not divest the lower courts of jurisdiction validly acquired over the case pending before them. It is designed to correct only errors of jurisdiction, including grave abuse of discretion amounting to lack or excess of jurisdiction.

As stated in Section 7, Rule 65 of the Revised Rules of Court, a petition for *certiorari* shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case, to wit:

> SEC. 7. *Expediting proceedings; injunctive* relief. – The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case.
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> The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge."

More so, a special civil action for *certiorari* under Rule 65 of the Revised Rules of Court is an original action, independent from the principal action, and not a part or a continuation of the trial which resulted in the

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[3] G.R. No. 190253, June 11, 2014, citing *Madrigal Transport, Inc. vs. Lapanday Holding Corp.*, G.R. No. 156067, August 11, 2004.

rendition of the judgment complained of. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. As a consequence, a petition for *certiorari* pending before a higher court does not necessarily become moot and academic by a continuation of the proceedings in the court of origin.[4]

Furthermore, the Court is not unaware of the principle of judicial courtesy wherein, even if there is no writ of preliminary injunction or temporary restraining order issued by a higher court, it would be proper for a lower court or court of origin to suspend its proceedings on the precept of judicial courtesy.[5] It should be noted however that the Supreme Court has clarified that the principle of judicial courtesy remains to be the exception rather than the rule.[6] In the case of *Republic vs. Sandiganbayan (First Division), et al*,[7] the Supreme Court has qualified and limited the application of the principle of judicial courtesy to maintain the efficacy of Section 7, Rule 65 of the Revised Rules of Court holding that the principle of judicial courtesy applies only if there is a strong probability that the issues before the higher court would be rendered moot and moribund as a result of the continuation of the proceedings in the lower court.

Although practical and ethical considerations may justify the suspension of proceedings in unusual circumstances and even in the absence of any injunctive writ from a superior court, the precept of judicial courtesy should not be applied indiscriminately and haphazardly if we are to maintain the relevance of Section 7, Rule 65 of the Revised Rules of Court which provides for the general rule that the mere pendency of a special civil action for *certiorari* commenced in relation to a case pending before a lower court or court of origin does not stay the proceedings therein in the absence of a writ of preliminary injunction or temporary restraining order.[8]

On a final note, considering that the proceeding herein was already at the end stage of the trial (i.e., submitted for decision) when the *Petition for Certiorari* was filed with the Supreme Court, to suspend the resolution of the present case would only cause undue delay to the parties.

In view of the foregoing disquisitions, the Court finds no compelling reason to reverse or modify the Decision promulgated on March 1, 2024.

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[4] *Mary Christine C. Go-Yu vs. Romeo A. Yu*, G.R. No. 230443, April 3, 2019.

[5] *Eternal Gardens Memorial Park Corp. vs. Court of Appeals*, G.R. No. 50054, August 17, 1988.

[6] *Bernardo De Leon vs. Public Estates Authority*, G.R. Nos. 181970 & 182678, August 3, 2010.

[7] G.R. No. 166859, June 26, 2006.

[8] *Eduardo M. Cojuangco, Jr. vs. Sandiganbayan and the Presidential Commission on Good Government (PCGG)*, G.R. No. 247892, April 28, 2021, citing *De Leon vs. Public Estates Authority*, G.R. Nos. 181970 & 182678, August 3, 2010.

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

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice