REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SM MART, INC. ET AL.,
Petitioners,

- versus -

CITY OF MANILA, ET AL.,
Respondents.

CTA EB NO. 548
(CTA AC No. 51)

Present:

ACOSTA, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
DEC 17 2010

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DECISION

COTANGCO-MANALASTAS, *J.*:

Before the Court of Tax Appeals *En Banc* is a Petition for Review seeking the partial reversal of the Court of Tax Appeals Second Division's Decision[1] dated July 3, 2009 as well as its Resolution[2] dated September 30, 2009, in the case entitled "City of Manila, *et al.* vs. SM Land, Inc., *et al.*", docketed as CTA AC No. 51.

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[1] *Rollo*, pp. 65-84.
[2] *Rollo*, pp. 86-94.

The factual antecedents, as narrated by the CTA Second Division, are not disputed by the parties. We reproduce them in part, as follows:

Petitioner SM Mart, Inc.; SM Prime Holdings, Inc.; Shoemart, Inc.; Star Appliances Center; Supervalue Inc.; Ace Hardware Philippines, Inc.; Watson Personal Care Stores, Phils., Inc.; Jollimart Philippines Corp.; Surplus Marketing Corporation; and Signature Lines are corporations duly organized and existing under Philippine laws.

Respondent City of Manila is a local government unit organized and existing under Republic Act (R.A.) No. 409 and is represented in this case by the City Mayor of Manila, Hon. Alfredo S. Lim.

Respondents Liberty M. Toledo and Joseph Santiago were the former Treasurer and the Chief of License Division of the City of Manila, respectively.

The circumstances of petitioners are summarized as follows:

Petitioner	Type of Business	Taxed under Ordinance No. 7794 (Section)
SM Mart, Inc.	Sells general merchandise of all kinds on wholesale or retail basis.	15, 16, 17, 18, 19, and 21
SM Prime Holdings, Inc.	Develops, operates, and maintains the business of modernized commercial shopping centers. It also maintains pay parking areas, cinemas, snackbars, and kiddie rides. It sells beers and leases stalls in its foodcourt.	15, 16, 17, 18, 19, 23, 24, 25, and 21
Shoemart, Inc. (now called SM Land, Inc.)	Sells general merchandise of all kinds, such as shoes, dry goods and wearing apparels, either by retail or wholesale, imports and exports, and acquires such goods as shall be necessary and expedient in conducting the business of the corporation; leases real estate and provides management services.	18, 24 and 21
Star Appliances Center	Sells, markets, and buys, whether wholesale or retail, home and office appliances, electric supplies and equipment, communication devices, hardware, machinery and other allied products, including their repair and service.	17 and 21
Supervalue Inc.	Conducts, operates, and maintains the business of	17, 18, 24 and

	a modernized supermarket and all businesses appurtenant thereto within the compound or premises of its establishment; offers photo developing services and leases food stalls in its premises.	21
Ace Hardware Philippines, Inc.	Conducts and carries on a general hardware business, whether wholesale or retail.	17 and 21
Watson Personal Care Stores Phils., Inc.	Sells general merchandise of cosmetics, beauty, and health products, both wholesale and retail.	17 and 21
Jollimart Philippines Corp.	Trades, imports and exports goods such as food stuff, canned goods and other general merchandise on wholesale or retail basis.	17 and 21
Surplus Marketing Corporation	Engages in general merchandising business, whether on wholesale or retail, and disposes of any or all kinds of Philippine or foreign-made commercial products generally without limitations.	17 and 21
Signature Lines	Engages in general merchandise and retail of ready-to-wear clothing of any and all kinds, without any limitations.	17 and 21

Respondents imposed local business taxes on petitioners pursuant to Ordinance No. 7794, as amended by Ordinance Nos. 7807, 7988, and 8011. The amendments introduced by the two latter ordinances (7988 and 8011) increased the rates of local business taxes applicable to petitioners under Sections 15, 16, 17, 18, 19, 23, 24, and 25 of Ordinance No. 7794, also known as the Revenue Code of Manila (RCM). Moreover, Ordinance No. 7988 amended Section 21 of the RCM by imposing additional business tax on petitioners and other taxpayers situated in Manila.

Despite reservations on the propriety of the tax imposition under Section 21 of the RCM, petitioners paid the additional tax under protest in order to secure their respective business permits and so that they may be allowed to continue their business operations within the City of Manila.

On June 15, 2004 and July 19, 2004, petitioners, through Cecilia R. Patricio of SM Group of Companies, formally requested the Office of respondent Toledo for tax credit or refund of the business taxes paid under the RCM for the year 2003 and for the first to third quarters of 2004. The details of the claim for refund are as follows:

Petitioner	Taxed under Ordinance No. 7794 (Section)	Amount of tax paid
SM Mart, Inc.	15, 16, 17, 18, and 19	3,543,318.97
	21	17,519,133.16
SM Prime Holdings, Inc.	15, 16, 17, 18, and 19	667,377.21
	21	6,711,068.38
Shoemart, Inc.	17	691,887.07
	21	2,954,520.24
Star Appliances Center	17	700,974.98
	21	3,459,812.76
Supervalue, Inc.	17 and 18	1,360,948.69
	21	2,774,859.82
Ace Hardware Philippines, Inc.	17	202,175.67
	21	988,347.16
Watson Personal Care Stores Phils., Inc.	17	214,667.73
	21	636,857.15
Jollimart Philippines, Corp.	17	98,223.61
	21	296,178.13
Surplus Marketing Corporation	17	84,494.76
	21	399,942.81
Signature Lines	17	49,566.91
	21	222,565.79

On July 8, 2004 and August 24, 2004, respondent Toledo denied petitioners' claim for refund.

On September 1, 2004, petitioners requested respondent Toledo for tax credit or refund of the overpaid business taxes in the amount of P5,910,850.21 for the year 2003 and P5,220,515.53 for the first and third quarters of the year 2004, resulting from the alleged erroneous implementation of the assessment and collection of local business taxes under Ordinance Nos. 7988 and 8011.

On October 14, 2004, respondent Toledo informed petitioners of the denial of their claim for refund. h

Petitioners filed their Complaint (with Application for Preliminary Injunction and Temporary Restraining Order)[3] with the Regional Trial Court, National Capital Judicial Region, Branch 115, Pasay City on January 21, 2005, and was docketed as Civil Case No. 05-0051-CFM entitled "SM Mart, Inc., *et al.* vs. City of Manila, *et al.*" Respondents filed their Answer (With Motion to Dismiss)[4] thereto on February 21, 2005.

Upon motion of petitioners, on the ground that there is no genuine issue as to any material fact and that the only issue involved is purely question of law that can be resolved based on the pleadings and records of the case without trial, the court *a quo* opted for summary judgment under Rule 35 of the Rules of Court.

Thereafter, in an Order[5] dated July 10, 2007, the court *a quo* rendered a decision in favor of petitioner, directing herein respondents to grant a refund/tax credit.

Not satisfied with the court *a quo's* decision, a Motion for Reconsideration was filed by respondents. However, the same was denied though an Order[6] promulgated on December 14, 2007.

On appeal to the CTA Second Division, the Court partially granted respondents' Petition for Review by reversing the court *a quo's* grant of tax refund to petitioners Shoemart, Inc. (hereafter referred to as "Shoemart") and Watson's Personal Care Stores, Phils. (hereafter referred to as "Watsons") on

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[3] Record, pp. 36-75.
[4] *Id.* at 76-100.
[5] *Id.* at 25-28.
[6] *Id.* at 29.

the ground that Shoemart and Watsons failed to comply with Section 4, Rule 8 of the 1997 Rules of Civil Procedure. Thus, the CTA Second Division held:

> "**WHEREFORE**, premises considered, the Instant Petition for Review is hereby **PARTIALLY GRANTED**. The appealed Order dated July 10, 2007 and Order dated December 14, 2007 of the Regional Trial Court of Pasay City, Branch 115, in Civil Case No. 05-0051-CFM are hereby **MODIFIED**. Accordingly, with the exception of Shoemart, Inc. and Watsons Personal Care Stores, Phils., petitioners are hereby **ORDERED to REFUND** the rest of the respondents, their erroneously paid local business taxes for taxable year 2003 and for the first to third quarters of taxable year 2004 in the aggregate amount of **THIRTY NINE MILLION SEVENTY-EIGHT THOUSAND NINE HUNDRED EIGHTY-EIGHT PESOS AND 81/100 (P39,078,988.81)**, detailed as follows:

Respondent	Taxed under Ordinance No. 7794 (Section)	Amount of tax paid
SM Mart, Inc.	15, 16, 17, 18, and 19	3,543,318.97
	21	17,519,133.16
SM Prime Holdings, Inc.	15, 16, 17, 18, and 19	667,377.21
	21	6,711,068.38
Star Appliances Center	17	700,974.98
	21	3,459,812.76
Supervalue, Inc.	17 and 18	1,360,948.69
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Jollimart Philippines, Corp.	17	98,223.61
	21	296,178.13
Surplus Marketing Corporation	17	84,494.76
	21	399,942.81
Signature Lines	17	49,566.91
	21	222,565.79

> **SO ORDERED.**"[7]

On July 23, 2009, respondents filed a "Motion for Extension of Time To File Petition for Review" with the Court *En Banc* until August 7, 2009.

[7] *Rollo*, p. 83.

Petitioners, on the other hand, filed on July 24, 2009 with the Second Division of the Court a "Motion for Partial Reconsideration" of the July 3, 2009 Decision.

On even date, respondents' "Motion for Extension of Time To File Petition For Review" was granted by the Court *En Banc* and respondents were given until August 7, 2009 within which to file their Petition for Review.

On August 7, 2009, respondents filed their petition.

However, a Motion for Reconsideration was filed by petitioners on the Resolution promulgated by the Court on July 24, 2009. Petitioners aver that respondents' "Motion for Extension of Time To File Petition for Review" should have been denied because an appeal with the CTA *En Banc* at the current stage of the proceedings is premature and dismissible.

Hence, the Court *En Banc* in a Resolution[8] dated September 3, 2009, granted petitioners' Motion for Reconsideration and ordered that the Resolution granting respondents' "Motion for Extension of Time To File a Petition for Review" be recalled and set aside and respondents' Petition for Review be dismissed.

On September 30, 2009, the Second Division promulgated a Resolution[9] denying petitioners' "Motion for Partial Reconsideration" for lack of merit. Hence, petitioners filed a Petition for Review with the Court *En Banc*.

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[8] *Id.* at 435-439.
[9] *Rollo*, pp. 86-94.

In a Resolution[10] dated November 11, 2009, the Court *En Banc* ordered respondents to file their Comment to said petition. Respondents complied with the Court's order, however, they raised in their Comment that the Court gravely erred in applying the "Coca-Cola Bottlers Decision" in the instant case.

After filing their respective Memorandum with the Court, the case was submitted for decision.

The issues[11] interposed by petitioners in their Petition for Review are as follows:

> "A. WHETHER THE DIVISION ERRED IN HOLDING THAT THE THIRTY (30)-DAY PERIOD WITHIN WHICH TO APPEAL DECISIONS OF THE REGIONAL TRIAL COURT TO THIS COURT UNDER SECTION 11, REPUBLIC ACT NO. 1125, AS AMENDED BY REPUBLIC ACT NO. 9282 MAY BE EXTENDED.
>
> B. WHETHER THE DIVISION ERRED IN DENYING PETITIONERS SHOEMART'S AND WATSON'S CLAIM FOR REFUND FOR LACK OF VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING AND SECRETARY'S CERTIFICATES."

In their Memorandum filed before this Court on February 4, 2010, petitioners alleged that the CTA erred in granting respondents additional time to file their Petition for Review since Section 11 of R.A. No. 1125[12] and the Revised Rules of the Court of Tax Appeals (hereafter referred to as "RRCTA") do not allow such an extension.

Petitioners further claim that the Rules of Court explicitly state that the Court of Appeals and the Supreme Court may grant an additional fifteen (15) a

[10] *Rollo*, pp. 96-97.
[11] *Rollo*, p. 14.
[12] An Act Creating the Court of Tax Appeals.

days within which to file a Petition for Review. However, the same is not true with the CTA since nothing in its implementing laws expressly mention the allowance of a 15-day extension for filing a Petition for Review. Also, they aver that the CTA's adoption of Rule 42 of the Rules of Court is erroneous since the same is limited to the mode of appeal, and not to the period of appeal.

We are not persuaded.

We rule that Section 1, Rule 42 of the Rules of Court supplements R.A. No. 9282.

Section 9 of Republic Act No. 9282[13], amending Section 11 of R.A. No. 1125, explicitly provides:

> "SECTION 9. Section 11 of the same Act is hereby amended to read as follows:
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> 'SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Sec. 7(a)(2) herein.
>
> **Appeal shall be made by filing a petition for review** under a procedure **analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided,** from

[13] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and For Other Purposes.

the expiration of the period fixed by law to act thereon. xxx" *(Emphasis supplied)*

Further, Section 1, Rule 7 of the Revised Rules of the Court of Tax Appeals states:

> "SECTION 1. *Applicability of the Rules of Court on procedure in the Court of Appeals, exception.* – The procedure in the Court *en banc* or in Division in original or in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court, except as otherwise provided for in these Rules."

It is clear that although R.A. No. 9282 and the RRCTA are silent as to whether or not motions for extension of time to file Petitions for Review on decisions or final orders of the Regional Trial Court to the CTA are allowed, the afore-mentioned rules clearly state that Rule 42 of the Rules of Court supplement these laws. Section 1, Rule 42[14] of the Rules of Court allows an extension of fifteen (15) days for filing a Petition for Review in the Court of Appeals; hence, it may be logically inferred that the same may also be permitted with the CTA.

In fact, in *City of Manila, et. al. vs. Coca-Cola Bottlers Philippines*[15], the Supreme Court had the opportunity of reconciling the issue of whether the CTA may grant an extension of time for filing an appeal, to wit: a

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[14] SECTION 1. *How Appeal Taken; Time for Filing.* – A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals.... Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, **the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review**. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. *(Emphasis supplied)*

[15] G.R. No. 181845, August 4, 2009.

> "It is crystal clear from the afore-quoted provisions that to appeal an adverse decision or ruling of the RTC to the CTA, the taxpayer must file a **Petition for Review** with the CTA **within 30 days** from receipt of said adverse decision or ruling of the RTC.
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> It is also true that the same provisions are silent as to whether such 30-day period can be extended or not. However, Section 11 of Republic Act No. 9282 does state that the Petition for Review shall be filed with the CTA **following the procedure analogous to Rule 42 of the Revised Rules of Civil Procedure**. Section 1, Rule 42 of the Revised Rules of Civil Procedure provides that the Petition for Review of an adverse judgment or final order of the RTC must be filed with the Court of Appeals within: (1) the original 15 day period from receipt of the judgment or final order to be appealed; (2) an extended period of 15 days from the lapse of the original period; and (3) only **for the most compelling reasons**, another extended period not to exceed 15 days from the lapse of the first extended period.
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> Following by analogy Section 1, Rule 42 of the Revised Rules of Civil Procedure, the **30-day** original period for filing a Petition for Review with the CTA under Section 11 of Republic Act No. 9282, as implemented by Section 3(a), Rule 8 of the Revised Rules of the CTA, may be extended for a period of **15 days**. No further extension shall be allowed thereafter, except only for the most compelling reasons, in which case the extended period shall not exceed **15 days**."

Moreover, Section 9 of R.A. No. 9282, amending Section 11 of R.A. No. 1125, states that any party adversely affected by a decision or ruling of the Regional Trial Court **may** file an appeal with the CTA within 30 days after receipt of such decision or ruling. a

Here, the use of the word "may" clearly shows that it is merely directory in nature and not mandatory. When used in a statute, it is **permissive only and operates to confer discretion.**[16]

A fortiori, petitioners' conclusion that the 30-day period to appeal is absolutely non-extendible is erroneous since it is within the Court's discretion to grant an extension of fifteen (15) days within which a party may file a Petition for Review.

Lastly, petitioners' allegation that Rule 42 of the Rules of Court is merely limited to the mode of appeal and not to the period of appeal is clearly untenable. From the very title of the provision itself, "How appeal taken; time for filing," it is clear that the provision not only provides for the mode of appeal but also the period within which the petitioner may file an appeal with the Court of Appeals.

Anent the second issue presented by petitioners, they allege that the Court should accept the attached Secretary's Certificates for SM Land, Inc. and Watson's Personal Care Stores Phils., Inc. as well as the verification and certification of non-forum shopping for SM Land, Inc. since petitioners inadvertently failed to attach these documents in their complaint filed with the trial court.

We find this allegation bereft of merit.

The CTA Second Division correctly denied admitting the documents submitted by petitioners in the judicial proceeding since the same were

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[16] *Filipino vs. Macabuhay*, G.R. No. 158960, November 24, 2006.

belatedly filed with no apparent justifiable reason for more than four (4) years.

Section 5, Rule 7[17] of the Rules of Court explicitly provides that a certification against forum shopping must be attached to the complaint or initiatory pleading. Otherwise, the petition shall be dismissed.

Here, it is apparent that petitioners failed to attach the required verification and certification of non-forum shopping for more than four years. Worse, they have not shown any compelling reason for this Court to disregard strict compliance with the rules. In *Mediserv Inc. vs. Court of Appeals, et al.*[18], the High Tribunal had the occasion to rule that the lack of certification against forum shopping is generally not curable by submission thereof after the filing of the petition. In certain exceptional circumstances, the Court has allowed nonetheless the belated filing of the certification.

In this case, however, no special circumstance or compelling reason exists to justify the relaxation of the rule requiring verification and certification on non-forum shopping since petitioners' failure to submit the required documents was due to their own negligence.

With respect to the issue pertaining to the lack of Secretary's Certificate of SM Land, Inc. and Watson's Personal Care Stores authorizing

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[17] SECTION 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: xxx
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. xxx *(Emphasis supplied)*

[18] G.R. No. 161368, April 5, 2010.

Atty. Cruz to represent petitioners in the judicial proceedings, the Court finds that the same was correctly denied by the CTA Second Division.

As correctly pointed out by the CTA Second Division, SM Land, Inc. and Watson's Personal Care Stores failed to comply with the requisite in Section 4, Rule 8 of the 1997 Rules of Civil Procedure, which provides:

> "SEC. 4. *Capacity.* – 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"

In this case, the authority from the board of directors appointing Atty. Cruz to represent petitioners occurred only after the filing of the complaint. Plainly, Atty. Cruz had no authority to represent them at the time the complaint was filed.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed decision dated July 3, 2009 and Resolution dated September 30, 2009 of the Former Second Division are hereby AFFIRMED.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were 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