REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

ACTUATE BUILDERS, INC.,
Respondent.

CTA *EB* NO. 2211
(CTA Case No. 9129)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

MAR 0 2 2021 4:03 p.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR), assailing the Decision dated October 3, 2019 and Resolution dated December 16, 2019, both of the Court of Tax Appeals Second Division (CTA 2nd Division). The assailed Decision and Resolution partially granted respondent Actuate Builders, Inc.'s claim for refund/issuance of a tax credit certificate of excess and unutilized input value-added tax (VAT) attributable to zero-rated sales for the first quarter of calendar year 2013.

FACTS

Petitioner is the government official charged with the administration and enforcement of national internal revenue laws. He is vested with the power to decide tax cases, including applications for refunds and/or tax credits.[1]

Respondent Actuate Builders, Inc. (Actuate Builders) is a domestic corporation registered with the Securities and Exchange Commission.[2]

The CTA 2nd Division summarized the factual antecedents, as follows:

> Petitioner [now, respondent] is a construction company, it provides construction works to its various Philippine Economic Zone Authority (PEZA) registered clients. Accordingly, petitioner alleges that it generated VAT zero-rated sales for such services, paid for in US dollars inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. As a result, for the first quarter of CY 2013, petitioner generated P50,789,826.58 in VAT zero-rated sales.
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> In the course of its operations for the same period, petitioner avers that it incurred and paid input VAT arising from its domestic purchases of goods and services, which is directly attributable to its zero-rated sales. Petitioner claims that it paid input VAT in the total amount of P2,857,766.93, in excess of the output tax due.
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> On March 31, 2015, petitioner filed with the BIR Revenue District Office (RDO) No. 50 an administrative claim for refund or issuance of tax credit certificate of its excess input VAT amounting to P2,857,766.93 for the first quarter of CY 2013.
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> On August 27, 2015, after the lapse of the 120-day period from the filing of the application for refund with no action from the respondent and to preserve its claim for refund, petitioner filed the instant petition.[3]

After trial, a Decision dated October 3, 2019 was promulgated, partially granting the claimed refund, as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR**

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[1] *Rollo*, CTA EB No. 2211, Petition for Review (PFR), p. 5.
[2] *Rollo*, PFR, p. 5.
[3] *Rollo*, Decision dated October 3, 2019, pp. 18-19.

> **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **P1,059,249.06**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the first quarter of CY 2013.
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> **SO ORDERED.**[4]

The CIR's Motion for Partial Reconsideration was likewise denied in the CTA 2nd Division's Resolution dated December 16, 2019.[5]

On January 22, 2020, the CIR filed the subject *Petition for Review*, within the extended period granted.[6] On February 28, 2020, Actuate Builders filed its *Comment (Re: Petition for Review, dated 21 January 2020)*,[7] and the case was submitted for decision on June 8, 2020.[8]

ISSUES

Petitioner submits the following grounds for the petition:

I. There is no valid claim for refund filed with the Bureau of Internal Revenue.

II. The Respondent is not entitled to a refund of P1,059,249.06 representing its excess and unutilized input VAT attributable to its zero-rated sales for the first quarter of CY 2013.[9]

Petitioner's arguments

Petitioner argues that there was no valid claim for refund filed within two (2) years after the close of the taxable quarter when the sales were made considering that the persons who filed the claim for refund were not authorized by respondent. Citing the Corporation Code[10] and jurisprudence, petitioner argues that there was no Board Resolution authorizing the filing of the claim for refund, nor authorizing the signatory of

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[4] *Rollo*, Decision dated October 3, 2019, p. 40.
[5] *Rollo*, pp. 43-47.
[6] *Rollo*, Minute Resolution dated January 16, 2020, granting a period of extension up to January 25, 2020.
[7] *Rollo*, pp. 55-62.
[8] *Rollo*, Resolution dated June 8, 2020, pp. 64-65.
[9] *Rollo*, PFR, p. 6.
[10] Batas Pambansa Bilang 68, Section 23.

the claim for refund. Petitioner further states, even assuming that the involved persons were authorized to sign the claim for refund, such authority was not presented, offered, and admitted during trial.

Following the lack of a valid claim for refund, petitioner argues that the CTA 2nd Division has no jurisdiction over the case; and that lack of jurisdiction over the subject matter can be raised at any time even for the first time on appeal. Petitioner argues that the lack of a valid claim for refund does not give rise to a demandable obligation on the part of the CIR, or does not ripen into a legal right in case of inaction. In the absence of a valid claim for refund, there is nothing for the CIR to act, and consequently, nothing to appeal before the CTA.

Finally, petitioner argues that in an action for tax refund/credit, the burden of proof rest upon the taxpayer to establish by sufficient evidence its entitlement to a claim for refund/credit.

Respondent's arguments

Respondent argues that the CIR's argument about the lack of board resolution showing the authority of the persons filing the claim for refund on behalf of respondent Actuate Builders, while couched in the language of jurisdiction, in truth raises a matter of evidence.

Respondent posits that if the CIR had made known his objection on the matter, then Actuate Builders could have furnished a board resolution evidencing such authority or ratifying the acts of the signatories, and that would be the end of the matter. However, petitioner raises the issue of alleged want of authority for the first time, nearly five years from the time the application was filed before his office.

Respondent then argues that for a claim for refund, the CIR requires the submission of numerous documents, contained in Annex A checklist of Revenue Memorandum Circular (RMC) No. 54-2014, which was applicable during the subject period of claim. Said RMC No. 54-2014 Annex A does not list a board resolution as a requirement.

While it is true that under RMC No. 47-2019, a notarized Secretary's Certificate is required showing the authority of the representatives to file, sign documents on behalf of the company, and/or follow-up VAT refund claims, respondent argues that such cannot be made to retroactively apply to its refund claim which was filed back in 2015.

Based on the foregoing, respondent prays that the petitioner's appeal be denied and to affirm the assailed Decision and Resolution.

RULING OF THE COURT

On January 14, 2020, petitioner filed its *Motion for Extension of Time to File Petition for Review* praying for an additional fifteen (15) days from January 10, 2020, or until January 25, 2020, within which to file his Petition for Review. While the extension was granted in the Minute Resolution dated January 16, 2020, further review of the case dockets reveals that the said *Motion for Extension* was filed late.

As found in the records, petitioner received the assailed Resolution dated December 16, 2019, on December 26, 2019 through BIR Revenue Region No. 08-Makati City and the Office of the Solicitor General.[11] Thus, petitioner had only until January 10, 2020 within which to file his Petition for Review or his motion for extension of time, as the case may be. Unfortunately, the *Motion for Extension* was filed only on January 14, 2020.

Petitioner knew well that the original period to file his Petition for Review ended on January 10, 2020, as shown in his prayer for an additional period of fifteen (15) days starting from January 10, 2020, or until January 25, 2020.

However, petitioner alleged that the assailed Resolution was received on January 10, 2020 contrary to the actual stamp showing receipt on December 26, 2019. Petitioner also alleged that at that time, BIR Revenue Region No. 08-Makati City was already dissolved due to the reorganization in the BIR, and, that it was only on January 10, 2020 that the case was transferred to BIR Revenue Region No. 08(A)-Makati City.

[11] Docket, CTA Case No. 9129, Notice of Resolution, p. 560; and *rollo*, p.42.

But, petitioner did not present any document showing that any reorganization took place within the BIR.

These circumstances lead the Court to conclude that petitioner was trying to mislead the Court as to the timeliness of the *Motion for Extension*, and to hide the fact that the *Motion for Extension* was already filed one[12] day late on January 14, 2020.

The Supreme Court's discussion in *Philippine National Bank v. Deang Marketing Corporation and Berlita Deang,*[13] deals with similar circumstances and is instructive, to wit:

> Petitioner had, following the reglementary 15-day period after service of summons (unless a different period is fixed by the court), until **May 5, 2006** within which to file an Answer or appropriate pleading. It filed the Motion for Extension, however, via a private courier on May 14, 2006, which was received by the trial court on May 15, 2006 or ten days late.
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> It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed <u>before</u> the expiration of the period sought to be extended. The court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court <u>powerless</u> to entertain or grant it. Since the motion for extension was filed after the lapse of the prescribed period, there was no more period to extend.
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> Petitioner was not candid enough to aver in the Motion for Extension that the period had lapsed, as it still toyed with the idea that it could get away with it. The allegations therein were crafted as if the said motion was timely filed. Notably, the May 16, 2006 Order expressed no inkling that the motion was filed out of time. The trial court either was deceived by or it casually disregarded the apparent falsity foisted by petitioner. Lest this Court be similarly deceived, it is imperative to carefully examine the facts.
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> By petitioner's allegation in its Motion for Extension, it received the summons on April 24, 2006. This is belied by the Process Server's Return, which indicates that petitioner received the summons on April 20, 2006. Petitioner's counsel was later to clarify that it was only on April 24, 2006 that

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[12] January 10, 2020 was a Friday, while work was suspended on January 13, 2020 due to the Taal Volcano eruption.
[13] G.R. No. 177931, December 8, 2008.

she received copies of the summons and complaint which were faxed from petitioner's main office.

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Rules of procedure, especially those prescribing the time within which certain acts must be done, have often been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. The bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules.

> Under Rule 1, Section 6 of the 1997 Rules of Civil Procedure, liberal construction of the rules is the controlling principle to effect substantial justice. Thus, litigations should, as much as possible, be decided on their merits and not on technicalities. <u>This does not mean, however, that procedural rules are to be ignored or disdained at will to suit the convenience of a party. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes.</u> Hence, it is a mistake to suppose that substantive law and procedural law are contradictory to each other, or as often suggested, that enforcement of procedural rules should never be permitted if it would resolute in prejudice to the substantive rights of the litigants.
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> Litigation is not a game of technicalities, but every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved. Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. <u>Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain his failure to abide by the rules</u>.
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> xxx xxx xxx

> Good faith is central to the concept of "excusable neglect" justifying failure to answer. An attempt to cover up the procedural lapses and obscure the technical imperfections negates good faith on the part of the party imploring the accommodating arm of the court.

Based on the foregoing, this Court cannot brush aside the fact that petitioner's *Motion for Extension* was filed one day late, without any compelling reason to do so. Neither can the Court ignore the fact that petitioner was not candid enough to aver in the *Motion for Extension* that the period had lapsed, as it still toyed with the idea that it could get away with it. The allegations therein were crafted as if the said motion was timely filed.[14]

It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended. The court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court powerless to entertain or grant it. Since the motion for extension was filed after the lapse of the prescribed period, there was no more period to extend.[15]

Applying all the foregoing, the period to file the Petition for Review having expired on January 10, 2020. At the time the *Motion for Extension* was filed on January 14, 2020, there was no longer any period to extend. Thus, the Petition for Review filed on January 22, 2020 was clearly filed out of time and must be dismissed.

To stress, the right to appeal is statutory and one who seeks to avail of it must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory. And, just as a losing party has the privilege to file an appeal within the prescribed period,

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[14] *Id.*
[15] *Id.*

so also does the prevailing party have the correlative right to enjoy the finality of a decision in his favor.[16]

WHEREFORE, the Petition for Review is **DISMISSED** for having been filed out of time.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[16] *Boardwalk Business Ventures, Inc. v. Elvira A. Villareal, et al.*, G.R. No. 181182, April 10, 2013.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice