REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE CITY OF MANILA, LIBERTY M. TOLEDO, in her capacity as THE TREASURER OF MANILA and JOSEPH SANTIAGO, in his capacity as CHIEF LICENSE DIVISION of CITY OF MANILA,
Petitioners,

C.T.A. EB No. 307
(C.T.A. AC No. 31)

Present:

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

-versus-

COCA-COLA BOTTLERS PHILIPPINES,
Respondent.

Promulgated:
JAN 18 2008 3:20 p.m.

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DECISION

CASTAÑEDA, JR., J.:

On appeal are the Resolutions dated July 26, 2007, June 8, 2007 and May 24, 2007 issued by the Court in Division dismissing the Petition for Review docketed as CTA AC 31 due to prescription.

The material antecedent facts:

The City of Manila is a public corporation empowered to collect and assess business taxes, revenue fees and permit fees through its Officers Liberty M. Toledo acting in the capacity as City Treasurer of Manila and Joseph Santiago acting in the capacity as Chief License Division ("petitioners"); while Coca-Cola Bottlers Philippines, Inc. ("respondent"), a corporation duly organized and existing under the laws of the Republic of the Philippines, is engaged in the manufacturing and selling beverages.

Petitioners assessed the respondent of business taxes, inclusive of penalties and interests, in the cumulative amount of P18,583,932.04 for the taxable year 2000.[1]

For failure to seek redress with the petitioners, the respondent filed an action for the cancellation of assessment on business taxes before the Regional Trial Court ("RTC") of the City of Manila, Branch 47 because it was taxed twice, under Sections 14 and 21 of the Manila Revenue Code ("MRC"), as amended.

On July 14, 2006, the RTC of Manila, Branch 47 issued a Decision dismissing respondent's action. The Trial Court reasoned that the business taxes imposed under Section 21 of the MRC, as amended are distinct and

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[1] Rollo, p. 37.

different from the business taxes levied, under Section 14 of the same Code, and thus, the absence of prohibited double taxation.[2]

The respondent filed a Motion for Reconsideration which was granted by the trial court in the Order dated November 16, 2006, and in effect, reversing the Decision dated July 14, 2006. In the Order dated November 16, 2006, the trial court decreed the cancellation and withdrawal of the assessment, and barred petitioners from further imposing business taxes against the respondent, pursuant to Section 21 of the MRC, as amended.[3]

In a Motion, the petitioners prayed for the reconsideration of the Order dated November 16, 2006, but the trial court promulgated another Order dated April 4, 2007 denying the same.[4]

Unfazed, the petitioners elevated the case before the Court in Division by first filing a "Motion for Extension of Time to File Petition for Review" on May 4, 2007.[5]

Dissatisfied, on May 18, 2007, the petitioners sent by registered mail, another Motion denominated as "Second Motion for Extension of Time to File a Petition for Review".[6]

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[2] See Rollo, pp. 35-41.
[3] See Rollo, pp. 78-79.
[4] See Rollo, pp. 85-86.
[5] See Rollo, p. 87.
[6] See Rollo, p. 92.

Meanwhile, acting on the first Motion for Extension, the Court in Division issued a Resolution dated May 24, 2007 denying the same, and dismissing the case due to petitioners' failure to file their Petition for Review within thirty (30) days from receipt of the April 4, 2007 Order.[7]

On May 30, 2007, the petitioners filed by registered mail, the Petition for Review docketed as CTA AC 31.[8]

In resolving the second Motion for Extension, the Court in Division issued a Resolution dated June 8, 2007 finding no cogent reason to set aside the May 24, 2007 Resolution, thus, reiterating the dismissal of the Petition.[9]

Undaunted, the petitioners sought a reconsideration of the Court's Resolutions dated June 8, 2007 and May 24, 2007.

In another Resolution dated July 26, 2007, the Court in Division stood firm in its stance dismissing the Petition for Review docketed as CTA AC 31.[10] Hence, before Us is the Petition for Review docketed as CTA EB 307, with the following assignment errors committed by the Court in Division:

> THE HONORABLE FIRST DIVISION ERRED IN DISMISSING THE PETITION FOR REVIEW ON THE GROUND THAT IT WAS FILED OUT OF TIME. *gc*

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[7] Rollo, pp. 30-31.
[8] See CTA AC 31.
[9] Rollo, pp. 32-34.
[10] Rollo, pp. 26-29.

THE HONORABLE FIRST DIVISION ERRED IN NOT CONSIDERING THE MERITS OF THE PETITION.[11]

According to the petitioners, the Court in Division erred in ruling that their appeal filed through a Petition for Review docketed as CTA AC 31 was undertaken beyond the prescribed period. Since petitioners received the RTC's final Order on April 20, 2007, the assigned counsel Maureen T. Vila mistakenly believed that the appeal period is fifteen (15) days. To rectify the situation, on May 4, 2007, Atty. Vila filed a Motion for Extension of Time praying for additional fifteen (15) days from May 5, 2007 until May 20, 2007 within which to file the Petition before the Court in Division.[12] However, on May 18, 2007, or two days before the lapse of the first extension sought, petitioners filed through registered mail, a second Motion for Extension of Time to file a Petition for Review requesting for additional period of ten (10) days, or until May 30, 2007 reckoned from May 20, 2007 within which to file the Petition.

It was only on May 30, 2007, petitioners filed a Petition for Review docketed as CTA AC 31 via registered mail because personal filing is no longer feasible since the messenger tasked to file the same arrived in Court after its receiving section had already closed. However, they came

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[11] Rollo, p. 7.
[12] Rollo, pp. 87-88.

to know that the Court in Division issued a Resolution as early as of May 24, 2007 dismissing the case.

Petitioners assert that prior to the lapse of the thirty (30) day period within which to file an appeal with the Court in Division, they seasonably filed the second Motion for Extension of Time on May 18, 2007. And prior to lapse of the period prayed for in the second Motion for Extension, petitioners were able to file the Petition for Review by registered mail.

The petitioners likewise submit that the first Motion for Extension is unnecessary since the period for filing an appeal with the Court in Division is thirty (30) days, instead of fifteen (15) days from receipt of the RTC's final Order, and thus, the second Motion for Extension may be treated as the first extension, under Rule 7 of the Revised Rules of the Court of Tax Appeals which is supplemented by Section 1, Rule 42 of the 1997 Rules of Civil Procedure. The latter provision states that "the Court may grant an additional period of fifteen (15) days within which to file the Petition for Review". Thus, the petitioners have properly pleaded for an additional time when they filed the second Motion for Extension of Time through registered mail, on May 18, 2007 since the same was filed two days before the lapse of the original thirty (30) day period. This Motion did not reach the Court in Division before it rendered the assailed Resolution because the Motion was filed through registered mail. The filing of a pleading or motion through registered mail is sanctioned under Section 3, Rule 13 of the 1997 Rules of Civil Procedure.

The same holds true with regard to the filing of the Petition for Review itself docketed as CTA AC 31. The Petition was filed via registered mail, within the extended period. Likewise invoking Section 3, Rule 13 of the 1997 Rules of Civil Procedure, the date of mailing is the date of filing. Hence, the Petition was filed on time.

Anent the failure to file the duplicate originals or certified true copies of the RTC's final Order, including the required number of copies of the Petition, petitioners attribute the same due to inadvertence brought by time pressure of work. To show compliance, they have submitted the required documents to the Court *En Banc*.

By merely focusing on procedural matters, the Court failed to consider the merits of the case on the existence or absence of prohibited double taxation.

In its Comment, the respondent counters that the Court in Division correctly dismissed the Petition docketed as CTA AC 31 for having been filed out of time, and for failure of the petitioners to file the correct number of copies, and the duplicate original or certified true copy of the RTC's final Order.

The respondent further alleges that the bases of the assessment, Ordinance 7988 and 8011, amending the MRC have been nullified by the Supreme Court in G.R. No. 156252 involving the same parties and issues.[13]

THE COURT'S RULING

The Petition is devoid of merit.

In their first Motion for Extension of Time to file Petition, the petitioners admitted having received on April 20, 2007, the RTC's final Order dated April 4, 2007 which was sought to be appealed before the Court in Division. Counting from April 20, 2007, the petitioners are entitled thirty (30) days, or until May 20, 2007 to appeal with the Court in Division, the final Order issued by the RTC which acted in its original jurisdiction on the action for cancellation of assessment, pursuant to Section 9 of Republic Act ("R.A.") 9282, reading:

> SEC. 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

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[13] June 27, 2006, 493 SCRA 279, G.R. 156252.

> 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 section 7(a)(2) herein.
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> 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 the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: *Provided, however*, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction, appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.

Being suppletory to R.A. 9282, the 1997 Rules of Civil Procedure allow an additional period of fifteen (15) days for the movant to file a Petition for Review, upon Motion, and payment of the full amount of the docket fees. A further extension of fifteen (15) days may be granted on compelling reasons in accordance with the provision of Section 1, Rule 42 of the 1997 Rules of Civil Procedure which provides:

> SECTION 1. *How appeal taken; time for filing.* – x x x Upon proper motion and the payment of the full amount of the docket and other lawful fees and 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. *gc*

While it is true that the petitioners filed their first Motion for Extension of Time to file the Petition prior to the lapse of the period of filing an appeal with the Court in Division, they, however, failed to file the actual Petition within the period prayed for in the first Motion for Extension. The Court in Division observed that:

> In this case, petitioners aver that they received the Regional Trial Court decision on April 20, 2007, hence, they had until May 20, 2007 to file a petition for review to assail the said decision. In fact, in their motion to extend the filing of the Petition for Review they requested until May 20, 2007 to file the same. However, as of the promulgation of this Resolution, no petition for review had been filed, thus, leaving the Court with no other option than to dismiss the case.[14]

When the petitioners filed their first Motion for Extension to file the Petition, they cannot safely assume that the Court in Division granted the Motion. Motions for Extension are not granted as a matter of right, but in the sound discretion of the Court.[15] Petitioners are duty bound to file the Petition within the period prayed for in the Motion for Extension. In the case of *Videogram Regulatory Board vs. Court of Appeals*[16], the Supreme Court had this to say:

> Let this serve as (a) warning among members of the Philippine bar who take their own sweet time with their cases if not purposely delay its progress for no cogent reason. It does no credit to their standing in the profession. More so when they do not file the required brief or pleading until their motion is acted upon. Not only should they not

[14] Rollo, p. 31
[15] *Bernardo vs. People*, G.R. 166980, April 3, 2007, 520 SCRA 332 and *Cosmo Entertainment Management, Inc. vs. La Ville Commercial Corporation*, G.R. 152801, August 20, 2004, 437 SCRA 145.
[16] G.R. 106564, November 28, 1996 citing Roxas vs. Court of Appeals, December 10, 1987, 156 SCRA 252.

> presume that their motion for extension of time will be granted by the court(,) much less should they except that the extension may be granted shall be counted from notice. They should file their briefs or pleadings within the extended period requested. Failing in this, they have only themselves to blame if their appeal or case is dismissed. (Underscoring Ours for emphasis).[17]

The right to appeal is neither a natural right nor a part of due process. The perfection of an appeal within the period and in the manner prescribed by law is mandatory; noncompliance with this legal requirement is fatal, and has the effect of making the judgment final and executory. [18] Thus, for failure to timely appeal the case before the Court in Division within the reglementary period, the RTC's Order dated April 4, 2006 which in effect ordered the cancellation of the assessment against the respondent became final and executory.

The Court *En Banc* subscribes also to the findings of the Division in dismissing the case due to the petitioners' failure to comply with the required attachments, specifically the number of copies of the Petition and the duplicate original and certified true copy of the assailed verdict of the RTC, under Section 4, Rule 5 and Sections 2, Rule 6 of the Revised Rules of the Court of Tax Appeals. In the case of *B.E. San Diego, Inc. vs. Rosario T. Alzul*[19], the Supreme Court explained the importance of appending the prescribed attachments to the Petition, holding that:

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17 Ibid.
18 *Bello vs. NLRC*, G.R. 146212, September 5, 2007, 532 SCRA 232.
19 G.R. 169501, June 8, 2007, 524 SCRA 403.

> Obviously, the main reason for the prescribed attachments is to facilitate the review and evaluation of the petition by making readily available to the CA all the orders, resolutions, decisions, pleadings, transcripts, documents, and pieces of evidence that are material and relevant to the issues presented in the petition without relying on the case records of the lower court. The rule is the reviewing court can determine the merits of the petition solely on the basis of the submissions by the parties without the use of the records of the court a quo.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**. The assailed Resolutions dated July 26, 2007, June 8, 2007 and May 24, 2007 are **AFFIRMED.**

SO ORDERED.

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

WE CONCUR:

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 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.

ERNESTO D. ACOSTA
Presiding Justice