REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

LA SUERTE CIGAR AND CIGARETTE FACTORY, TELENGTAN BROTHERS & SONS, INC.
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NOS. 7553 & 7644

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
AUG 24 2011
ABFernando 3:30p.m.

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RESOLUTION

COTANGCO-MANALASTAS, *J.*:

Submitted for the consideration of this Court is the *Motion to Withdraw Petition* filed by petitioner La Suerte Cigar and Cigarette Factory, Telengtan Brothers & Sons, Inc. on July 15, 2011. Petitioner respectfully prays for this Court to dismiss its Petition for Review on the ground that the findings of the Bureau of Internal Revenue partially granting petitioner's administrative claim for refund or tax credit is acceptable to the latter pursuant to the provisions of Revenue Memorandum Circular No. 49-2003.

In its *Motion*, petitioner states that respondent has already acted on its administrative claim and favorably granted petitioner La Suerte's claim for the refund of its erroneous excise tax payments for taxable period ended December 31, 2005, and that the above findings of the Bureau of Internal Revenue on its administrative claim for refund are acceptable to petitioner. Thus, petitioner now requests from this Court the withdrawal of the instant case against the Commissioner of Internal Revenue in order for the petitioner to claim a refund or tax credit certificate pursuant to Revenue Memorandum Circular No. 49-2003.

In a *Resolution* dated July 20, 2011, respondent Commissioner of Internal Revenue was ordered to comment on petitioner's *Motion to Withdraw Petition.*

On July 26, 2011, respondent filed her *Comment* to petitioner's *Motion* where she expressed that she has no objection to the withdrawal of the petition in these consolidated cases.

As aptly cited by petitioner, relevant to the resolution of its *Motion* is Revenue Memorandum Circular No. 49-2003 which essentially provides for additional guidelines on issues relative to the processing of claims for value added tax (VAT) credit/refund, *viz*:

> "In cases where the taxpayer has filed a "Petition for Review" with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately. xxx xxx xxx In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.
>
> If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim.

On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite to the release of the tax credit certificate/tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon the initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/processing office." *(Emphasis supplied)*

The Rules of Court are supplementary to the Revised Rules of the Court of Tax Appeals. Accordingly, in view of the fact that the *Motion to Withdraw Petition* was filed subsequent to issuance of the *Resolution* dated April 26, 2011 submitting the above-captioned case for decision, this Court is given the discretion to withdraw the instant consolidated petitions at this stage pursuant to Section 3, Rule 50 of the 1997 Rules of Court which provides:

"RULE 50

DISMISSAL OF APPEAL

SEC. 3. Withdrawal of appeal. — An appeal may be withdrawn as of right at anytime before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court."

Taking into consideration that respondent Commissioner of Internal Revenue has already acted on petitioner La Suerte's administrative claim, which partially grants petitioner's claim for the refund or tax credit for taxable period ended December 31, 2005; that the above findings of the Bureau of Internal Revenue on petitioner's administrative claim for refund or tax credit are amenable to petitioner; and considering that respondent has expressed in her *Comment* that she has no objection to the *Motion*, the granting of the instant *Motion to Withdraw Petition* is in order.

WHEREFORE, premises considered, petitioner's "*Motion to Withdraw Petition*" filed on July 15, 2011 is hereby GRANTED. Accordingly, petitioner's claim for refund or issuance of tax credit certificate in the amount of P202,222,800.00 is hereby deemed WITHDRAWN, and these consolidated Petitions for Review are hereby considered CLOSED and TERMINATED.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

(On Official Business)
LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice