Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

CHINA BANKING CORPORATION,
Petitioner,

-versus-

CITY TREASURER OF MANILA,
Respondent.

EB CASE NO. 146
(RTC Civil Case No. 04-110139)
(MTC Civil Case No. 175173)

Members:
ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

AUG 0 2 2006 Apolinario

x- -x

DECISION

CASANOVA, J.:

This is an appeal to the Court of Tax Appeals *En Banc* by way of a verified Petition for Review, under Section 7 (a)(3) of Republic Act No. 9282, otherwise known as "An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA)", of the Decision dated October 7, 2004 rendered by the Regional Trial Court (RTC), Branch 36, City of Manila, in the exercise of its appellate jurisdiction in Civil Case No. 04-110139 entitled "China Banking Corporation vs. City Treasurer of Manila", as well as its Order dated October 28, 2005, denying herein-petitioner's Motion for Reconsideration.

The facts of the case, as culled from the records, are as follows:

Petitioner-China Banking Corporation, filed its complaint with the Metropolitan Trial Court (MTC) of Manila on April 21, 2003, docketed as Civil Case No. 175173-CV and raffled to Branch 29. Petitioner is asking for refund of the money it paid under the assessment issued by herein-respondent, City

94

Treasurer of Manila, supposedly under Section 21 of City Ordinance No. 7988. Petitioner contends that banks and banking activities are not covered by such provision of the city ordinance whereby the refund is a matter of petitioner's right.

Respondent filed her Motion to Dismiss dated July 25, 2003, alleging that petitioner's complaint failed to show compliance with Section 196 of the Local Government Code (LGC), which states that no case or proceeding shall be maintained in any court for the recovery of any tax, fee or charges erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. Respondent further alleged that petitioner is guilty of forum shopping by filing several cases involving the same issue of assessment and collection.

Petitioner, in its comment to the said motion, alleged that its letter of protest when paying the tax or fee collected from it is in itself in the nature of a claim for refund or credit which satisfies the requirement of the LGC.

On November 10, 2003, the Metropolitan Trial Court (MTC), Branch 29 issued an Order dismissing the complaint for refund for failure to comply with the provision of the LGC that a written claim for refund must first be filed with the local treasurer.

Not satisfied with the said Order, petitioner moved for a reconsideration. On April 16, 2004, the MTC denied petitioner's Motion for Reconsideration.

Petitioner appealed to the RTC of Manila the November 10, 2003 And April 16, 2004 Orders of Branch 29, MTC of Manila, docketed as Civil Case No. 04-110139 entitled "China Banking Corporation vs. City Treasurer of Manila" and raffled to Branch 36. On October 7, 2004, the RTC affirmed the Order of Dismissal of the MTC. Petitioner filed its Motion for Reconsideration dated October 29, 2004 with the RTC. On October 28, 2005, the RTC promulgated an Order denying petitioner's Motion for Reconsideration for lack of merit.

95

Hence, this appeal to the Court *En Banc* by way of a Petition for Review.

Petitioner, in support of its Petition for Review, raised the following issues:

I. WHETHER OR NOT THE LOCAL GOVERNMENT CODE REQUIRES A SPECIFIC FORM OF THE LETTER OF REFUND.

II. WHETHER OR NOT A STRICT CONSTRUCTION OF THE STATUTE SHOULD BE APPLIED.

On the other hand, respondent, in her Comment filed on March 21, 2006, prays that the instant Petition for Review be dismissed for utter lack of merit. Respondent argues that the petitioner did not raise a genuine issue and/or errors committed by the lower courts that would warrant a reversal of the assailed Orders. Furthermore, respondent likewise alleges that the Petition for Review was filed out of time or beyond the period prescribed by Section 9 of R.A. No. 9282, which mandates the filing of the petition within thirty (30) days from receipt of the assailed decision.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* partly does not agree with the respondent.

Respondent cannot argue that the instant Petition for Review was filed out of time. As stated by the respondent, on page 3 of his Comment to the Petition for Review filed *En Banc*, to wit:

> *"xxx petitioner had admitted in Pages 5 and 6 of its Petition that it received on October 15, 2004 the Decision of the Regional Trial Court, Branch 36, Manila dated October 7, 2004.*
>
> *Fourteen (14) days after receipt of the Decision or on October 29, 2004, petitioner filed its Motion for Reconsideration which was denied in an Order dated October 28, 2005, a copy of which was received by it on November 9, 2005. From receipt of the Order denying hits [sic] motion for reconsideration on November 9, 2005, petitioner has sixteen (16) days left within which to file the petition for review which was until November 25, 2005 only. The Petition for Review, however, was belatedly filed on December 8, 2005 or thirteen (13) days after the 30-day period had already lapsed. Hence the dismissal of the instant petition is warranted for not having been filed within the reglementary period,*

96

that is, forty three (43) days from receipt of the assailed decision of the Regional Trial Court, Branch 36, Manila." (Italics ours)

Such argument is without merit.

Section 3 (c), Rule 8 of the The Revised Rules of the Court of Tax Appeals, provides as follows:

"Sec. 3 *Who may appeal; period to file petition.-*

(a). xxx xxx xxx
(b). xxx xxx xxx
(c). A party adversely affected by a decision or ruling of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction ***may appeal to the Court by filing before it a petition for review within thirty days from receipt of a copy of the questioned decision or ruling***." (Underscoring and Emphasis supplied)

Applying the above-cited provision in the present case, petitioner has thirty days from his receipt of the Order of the RTC denying its motion for reconsideration within which to elevate his appeal to the Court *En Banc*. The thirty (30) day period cannot be reckoned from the date petitioner received the October 7, 2004 Decision because it seasonably filed a Motion for Reconsideration with the RTC. It was only after the petitioner received the Order denying its motion for reconsideration that the period to appeal with the CTA *En Banc* commenced.

However, with respect to the argument of the respondent that the instant petition does not raise a genuine issue and/or errors committed by the courts-a-quo, We find for the respondent.

As correctly found out by the MTC Branch 29, Manila, and affirmed by the RTC Branch 36, Manila, the letter dated January 20, 2003 of the petitioner, addressed to the City Treasurer of Manila, was a letter under protest of its payment for an alleged additional local government tax. The said letter is hereby reproduced for easy reference:

97

"CHINABANK

January 20, 2003

Ms. Liberty M. Toledo
City Treasurer
City of Manila

Dear Madame,

We are hereby paying UNDER PROTEST alleged additional local government tax for the current year (2003) in the total amount PESOS: NINETY TWO THOUSAND SEVEN HUNDRED FIFTY ONLY (Php92,750.00) included in Manager's Check No. 19526 payable to "The City Treasurer of Manila ftao CBC-Quiapo Branch". It is our position that we are not liable on the said alleged additional tax; and assuming that we are covered by Sec. 21 of the Ordinance cited, such constitutes double taxation and must be struck down.

Please be notified that we are presently instituting the appropriate legal action to effect refund of any erroneous/excessive payment made hereby.

Sincerely yours,

(Sgd)
Shirley T. Tan
Senior Manager
Quiapo Branch"

This letter is not a claim for refund, as contemplated under Section 196 of the LGC, to wit:

"Sec. 196. *Claim for refund of Tax credit.*- No case or proceeding shall be maintained in any Court for the recovery of any tax, fee or charges erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any Court after the expiration of two (2) years from the date of payment of such tax, fee or charge, or from the date the taxpayer is entitled to a refund or credit."

It is clear from the wordings of the letter that it is but a notice to the City Treasurer that petitioner is instituting the appropriate legal action for refund. The said letter does not ask the City Treasurer to do any act, in particular, to make a refund or credit of petitioner's alleged erroneous payment of local taxes. In the very words of the letter, the petitioner is about to institute a claim for refund or credit. The letter is not an action by itself, rather it shows payment under protest so as to negate waiver or acquiescence on the part of the taxpayer. The January 20, 2003 letter of the petitioner to the City Treasurer is for the purpose of complying with the statutory requirement of "Payment Under Protest", as provided under the Local Government Code.

As opposed to the argument of the petitioner, the Court *En Banc* finds that the letter did not apprise the City Treasurer of the former's intention to effect a refund. The Local Government Code does not require a specific form of the letter of refund. However, there must be a categorical written statement on the part of the taxpayer whether he is manifesting his intention to effect a claim for refund or credit of alleged erroneous payment of local taxes or writing a letter of protest or both.

As regards the petitioner's argument that, "*a liberal construction of the statute should be applied, inasmuch as a document was filed with the City Treasurer evidencing petitioner's claim for refund of the amount paid*', We find it untenable.

Well entrenched in our jurisprudence is that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption ***(Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87 [1999])***. Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund ***(Citibank N.A. vs. Court of Appeals, 280 SCRA 459 [1997])***.

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed October 7, 2004 and October

99

28, 2005 Orders of the Regional Trial Court, Branch 36, Manila. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidences in their perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

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

100