REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

EURO-MED LABORATORIES PHIL., INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EB No. 243
(CTA Case No. 7274)

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

Promulgated:

SEP 2 5 2007 [signature]

x - x

DECISION

CASANOVA, J:

This is a Petition for Review,[1] filed by the petitioner-EURO-MED LABORATORIES PHILS. INC., with the Court *En Banc*, pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, from the Resolution[2] (*First Assailed Resolution*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated August 4, 2006 in CTA Case No. 7274 entitled, *"Euro-Med Laboratories Phil., Inc., petitioner vs. Commissioner of Internal Revenue, respondent,"* granting respondent's "Motion for Preferential Resolution of Respondent's Affirmative Defense of Prescription"[3] and accordingly, dismissing the Petition for Review[4] filed by the petitioner in the above-mentioned

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[1] CTA En Banc Rollo, pp. 6-25.
[2] Annex "A", CTA En Banc Rollo, pp. 28-32.
[3] CTA Second Division Rollo, pp. 328-331.
[4] CTA Second Division Rollo, pp.1-9.

case, and from the Resolution[5] (*Second Assailed Resolution*) dated December 4, 2006 denying petitioner's Motion for Reconsideration[6] for lack of merit.

Petitioner Euro-Med is a domestic corporation duly registered and organized under Philippine laws with principal office located at 1000 United Nations Avenue corner San Marcelino Street, Manila. It is engaged in the manufacture and sale of pharmaceutical products such as large volume parenterals, more commonly known as intravenous fluids and small volume parenterals, injectible liquids in containers of 100 ml or less. Petitioner Euro-Med is a public corporation listed on the Philippine Stock Exchange and is classified among the Top 1000 corporations in the country. *(Paragraph 1.1, Petition for Review, CTA Second Division Rollo, p. 1)*

Respondent is the duly appointed Commissioner of Internal Revenue vested with authority as such, among others, to examine and audit tax returns and to make assessments thereon as provided by law and holds office at the Bureau of Internal Revenue ('BIR') National Office Building, BIR Road, Quezon City, where he may be served with summons and other court processes. *(Paragraph 1.2, Petition for Review, CTA Second Division Rollo, p. 1)*

The facts of the case, as jointly stipulated by the parties[7], are as follows:

> *"2. On 4 April 2003, petitioner Euro-Med received two (2) letters both dated 1 April 2003 (LN VAT-LTS 0026-01-03 and LN-VAT-LTS 0027-01-03) from respondent Commissioner alleging that 'a computer check and data reconciliation ... disclosed discrepancies in your declared VAT sales as compared to the declared VAT purchases of your customer(s) (Abbot Laboratories/Medical City) for the taxable year 2001' in the amount of P1,059,879.64 (Abbot Laboratories) and P2,907,339.27 (Medical City). The letters also alleged that the 'discrepancies' were 'hidden' sales, the concealment of which may have allowed you to under-declare your sales and thus evade payment of taxes due thereon.' The letter concluded with an offer that if petitioner Euro-Med voluntarily declared its unreported sales and paid the corresponding taxes, the 50%*

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[5] Annex "C", CTA En Banc Rollo, pp.44-46.
[6] Annex "B", CTA En Banc Rollo, pp.33-43.

[7] Joint Stipulation of Facts (JSF), duly approved by the Court in a Resplution dated April 4, 2006.

surcharge, the interest of 20% per annum and compromise penalties would be abated and immunity from closure and criminal suit would be given. Copies of the aforesaid letters are attached to the JSF as Annexes 'A' and 'B'.

3. In reply to the aforesaid letters of respondent Commissioner, petitioner Euro-Med wrote two (2) letters both dated 21 April 2003, which were received by respondent Commissioner on the same date, stating that petitioner Euro-Med's policy has always been to make a correct disclosure of all its sales to the BIR and presenting an itemized list of its sales invoices to both Abbot Laboratories and Medical City for the year 2001. Copies of the aforesaid letters are attached to the JSF as Annexes 'C' and 'D'.

4. On 12 July 2004, petitioner Euro-Med received a Preliminary Assessment Notice dated 29 June 2004 from the Large Taxpayers Service of the BIR assessing petitioner the amount of P780,812.17 as deficiency income tax plus interest of 20% p.a. for the period 16 April 2002 to 30 August 2004 in the amount of P370,939.26 and deficiency value added tax of P244,003.80 plus interest of 20% p.a. for the period 26 January 2002 to 30 August 2004 in the amount of P126,614.58. A copy of said Preliminary Assessment Letter is attached to the JSF as Annex 'E'.

5. In reply to the Preliminary Assessment Notice dated 29 June 2004, petitioner Euro-Med, on 26 July 2004, wrote a letter which was received by the Large Taxpayers Service of the BIR on 27 July 2004, protesting the said assessment and requesting respondent Commissioner to furnish it with a copy of the detailed listing of the invoices supporting the list of reported purchases of Abbot Laboratories and Medical City to enable it to verify and reconcile the alleged "discrepancies". Petitioner Euro-Med also reminded the BIR that making an assessment without providing it with an opportunity to verify the aforesaid list constitutes a deprivation of due process. A copy of said letter is attached to the JSF as Annex 'F'.

6. On 6 September 2004, petitioner Euro-Med received a Formal Letter of Demand dated 10 August 2004 demanding payment of deficiency income tax of P780,812.17 plus interest of 20% p.a. thereon for the period 16 April 2002 to 30 October 2004 of P397,037.64, or a total of P1,177,849.81 and deficiency VAT of P244,003.80 and interest of 20% p.a. for the period 26 January 2002 to 30 October 2004 of P134,770.32, or a total of P378,774.12. In the aforesaid letter, the respondent Commissioner stated 'the assessment are based on the Summary List of Purchases submitted to the BIR by Medical City and Abbot Laboratories.'

In reply to the request of petitioner Euro-Med for a detailed list of purchase invoices of Medical City and Abbot Laboratories, respondent Commissioner also stated that:

> *The Summary List of Purchases submitted to this office by your suppliers does not show the detailed listing of the purchase invoices. Per Revenue Regulation 8-2002, the quarterly summary lists reflect only the consolidated monthly transactions per seller/supplier or buyer. Thus, we cannot furnish you with the requested documents supporting the Summary List of purchases for Medical City and Abbot Laboratories.*
>
> *Once an assessment is issued against a taxpayer, the said taxpayer has the burden to disprove the assessment. While it is true that this Bureau has the authority to obtain data from a taxpayer, so does your company. As seller to Medical City and Abbot Laboratories, you have the right to be informed of the data provided by these sellers on matters related to your transactions with them since they are the source of information where the assessment was based on." (underscoring supplied)*

A copy of said Formal Letter of Demand is attached to the JSF as Annex 'G'.

7. In response to the Formal Letter of Demand dated 10 August 2004, petitioner Euro-Med wrote a letter dated 15 September 2004 informing the respondent Commissioner that pursuant to its instructions, it had written to Abbot Laboratories and Medical City for the detailed listings of invoices supporting the amount in the List of Purchases submitted to the BIR in order to make the necessary verification and reconciliation so that it can explain the alleged 'discrepancies'. A copy of the aforesaid letter is attached to the JSF as Annex 'J'.

8. On 05 October 2004, petitioner received a Tax Verification Notice dated 30 September 2004 for the Large Taxpayers Service of the BIR regarding its 'request for reinvestigation'. A copy of said Tax Verification Notice is attached to the JSF as Annex 'M'.

9. In reply to the Tax Verification Notice dated 30 September 2004, petitioner Euro-Med sent a letter dated 25 October 2004, which was received by the BIR on 29 October 2004, informing it that it will submit the necessary reconciliation as soon as Abbot Laboratories and Medical City respond to its request for a detailed list of invoices *supporting the List of Purchases from petitioner Euro-Med for the year 2001 which they submitted to the BIR. A xerox copy of the said letter is attached to the JSF as Annex 'N'.*

10. On 9 December 2004, petitioner Euro-Med wrote the Large Taxpayers Service of the BIR informing them that in spite of three (3) previous letter requests, both Abbot Laboratories and Medical City have not given petitioner a detailed list of invoices supporting the List of Purchases submitted to the BIR and reiterating its request to issue a letter to Abbot Laboratories and Medical City to provide the aforesaid lists. A copy of said letter is attached to the JSF as Annex 'Q'.

11. Instead of acceding to the request of petitioner Euro-Med, the Large Taxpayers Service of the BIR issued a Final Decision on Disputed Assessment dated 18 January 2005, which was received by petitioner Euro-Med on 22 February 2005, stating that the alleged 'discrepancies' were construed as 'under declared sales' citing the failure of petitioner Euro-Med to introduce any evidence to overthrow the validity of its findings. A copy of said Final Decision on Disputed Assessment is attached to the JSF as Annex 'R'.

12. On 3 March 2005, petitioner Euro-Med wrote a letter to respondent Commissioner, a copy of which was received by respondent Commissioner on 10 March 2005, requesting that the aforesaid Final Decision on Disputed Assessment be reconsidered and set aside and reiterating its earlier request to compel Abbot Laboratories and Medical City to submit a detailed list of its invoices supporting the List of Purchases from petitioner Euro-Med for the year 2001 which they submitted to the BIR. A copy of said letter is attached to the JSF as Annex 'S'.

13. On 3 May 2005, petitioner Euro-Med received a Collection Letter dated 19 April 2005 demanding the payment of the income and value added taxes for the year 2001 under the earlier Formal Letter of Demand dated 10 August 2004. A copy of said Collection Letter is attached to the JSF as Annex 'T'.

14. On 4 May 2005, petitioner replied to said Collection Letter dated 19 April 2005 and informed the BIR that the matter was pending with the respondent Commissioner. A copy of said letter is attached to the JSF as Annex 'U'.

15. On 16 June 2004, petitioner Euro-Med received a Final Notice Before Seizure dated 31 May 2005 stating that its failure to pay the total amount of P1,556,623.93 representing deficiency income and value added taxes for the year 2001 within ten (10) days from receipt thereof

> *will constrain it to issue warrants of distraint (sic) and levy against petitioner Euro-Med. A copy of said Final Notice Before Seizure is attached to the JSF as Annex 'V'."*[8]

On March 29, 2006, respondent filed a "Motion for Preferential Resolution of Respondent's Affirmative Defense of Prescription"[9] stating therein, *"that the assessment has already become final, executory and demandable for failure of petitioner to file the instant petition within the prescriptive period pursuant to Section 228 of the Tax Code"*.

Petitioner filed an Opposition (To Respondent's Affirmative Defense)[10] on May 12, 2006. On August 4, 2006, the *CTA Second Division* promulgated the *First Assailed Resolution*, the dispositive portion of which reads:

> *"**WHEREFORE**, premises considered, respondent's motion is hereby **GRANTED. ACCORDINGLY**, the instant Petition for Review is hereby **DISMISSED**.*
>
> ***SO ORDERED."***

Not satisfied with the above pronouncement of the Court, petitioner filed a "Motion for Reconsideration"[11] praying that the *First Assailed Resolution* be set aside and the Petition for Review be given due course. Respondent, on the other hand, filed an Opposition (Re: Motion for Reconsideration)[12] on September 27, 2006. On November 3, 2006, petitioner filed a Reply (To Opposition to Motion for Reconsideration)[13].

On December 4, 2006, the *CTA Second Division* promulgated the *Second Assailed Resolution*, to wit:

> *"**WHEREFORE**, in view of the foregoing, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.*

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[8] CTA Second Division Rollo, pp. 225-230.
[9] Ibid.
[10] CTA Second Division Rollo, pp. 334-341.
[11] Ibid.
[12] CTA Second Division Rollo, pp. 364-366.
[13] CTA Second Division Rollo, pp. 370-373.

SO ORDERED."

The *Second Assailed Resolution* was received by the petitioner on December 19, 2006, thus, it has fifteen (15) days from said date within which to file a Petition for Review with the Court *En Banc* pursuant to Section 3(b) Rule 8 of the Revised Rules of the Court of Tax Appeals[14]. On January 3, 2007, petitioner filed a "Motion for Extension of Time to File Petition for Review with the Court *En Banc*."[15] On January 5, 2007, the Court *En Banc* issued a Minute Resolution[16] granting the said motion thus, giving petitioner a final and non-extendible period of fifteen (15) days from January 3, 2007 or until January 18, 2007 within which to file a Petition for Review with the Court *En Banc*. In compliance with the Court's Resolution, petitioner filed a Petition for Review[17] with the Court *En Banc* on January 18, 2007.

Petitioner alleges that the CTA Second Division erred in ruling that the collection letter dated April 19, 2005 was the final decision of respondent-Commissioner appealable to the CTA in that:

I.

THE COLLECTION LETTER DID NOT INDICATE IN CLEAR AND UNEQUIVOCAL LANGUAGE THAT IT WAS THE FINAL DETERMINATION OF RESPONDENT COMMISSIONER OF THE DISPUTED ASSESSMENT.

II.

THE COLLECTION LETTER DID NOT STATE CATEGORICALLY THAT THE APPEAL MADE BY PETITIONER BY RESPONDENT COMMISSIONER WAS DENIED.

III.

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[14] Sec. 3. Who may appeal; period to file petition-

(a) xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. xxx xxx.

[15] CTA En Banc Rollo, pp. 3-4.

[16] CTA En Banc Rollo

[17] Ibid.

THE COLLECTION LETTER DID NOT HAVE THE "CHARACTER OF FINALITY" OF A FINAL DECISION OF RESPONDENT COMMISSIONER.

IV.

IT IS THE FINAL NOTICE BEFORE SEIZURE THAT CONSTITUTES THE FINAL DECISION OF THE RESPONDENT COMMISSIONER APPEALABLE TO THIS HONORABLE COURT.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its assailed Resolutions. The arguments raised by the petitioner are basically the same grounds it stated in its Motion for Reconsideration[18], which were exhaustively discussed in the *CTA Second Division's First* and *Second Assailed Resolutions*.

Pertinent to the resolution of the instant Petition for Review is the Collection Letter, which is hereunder quoted for reference purposes, to wit:

"REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
LT-Collection & Enforcement Division
Quezon City

COLLECTION LETTER

The President
EUROMED LABORATORIES, INC.
PPL Bldg., United Nations Ave.
Manila

April 19, 2005

Dear Sir,

Our records show that you have an assessment in the aggregate amount of P1,556,623.93 representing deficiency income and value-added taxes for the taxable year 2001 under Letter of Demand (Assessment No. INC-01-000111 and VT-01-000126) dated August 10, 2004. The Final Decision on Disputed Assessment dated January 18, 2005

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[18] Ibid

had been served to you on February 22, 2005 thru Ms. Karen Anne A. Tan. Details of the assessments are as follows:

Tax Type	Basic Tax	Surcharge	Interest	Compromise	Total
IT	P 780,812.17	-	397,037.64	-	P 1,177,849.87
VT	244,003.80	-	134,770.32	-	378,774.12
TOTAL	1,024,815.97	-	531,807.96	-	1,556,623.93

It is requested that you pay within ten (10) days from receipt hereof thru Electronic Filing and Payment System (EFPS) and please furnish the Chief, LT-Collection and Enforcement Division, Rm. 909, 9th Floor, BIR Bldg., BIR Road, Diliman, Quezon City with copies of confirmation receipt together with this letter as our basis for canceling/closing your liability. Otherwise, this Office will be constrained to enforce the collection thereof thru the administrative summary remedies provided for by law, without further notice.

We will appreciate your preferential attention on this matter.

Very truly yours,

GUILLERMO L. PARAYNO, JR.
Commissioner of Internal Revenue

By:

(signed)
KIM S. JACINTO-HENARES
Deputy Commissioner for Special Concerns
OIC, Large Taxpayers Service

In reply, please contact:
Ms. Amelia A. Taron/Reynalda Catabay
Tel. Nos. 925-15-05/926-57-79
D-7aat"[19]

In resolving respondent-Commissioner's "Motion for Preferential Resolution of Respondent's Affirmative Defense of Prescription", the *CTA Second Division* correctly found and We quote with approval a portion of the *First Assailed Resolution*, to wit:

"It must be emphasized that when petitioner filed its request for reconsideration on the Final Decision on Disputed Assessment,

[19] CTA Second Division Rollo, pp. 118.

a Collection Letter dated April 19, 2005 and received by the petitioner on May 3, 2005, was issued for and in behalf of the Commissioner of Internal Revenue himself. The collection letter received by petitioner verily signified a character of finality, which was likewise tantamount to the denial of its request for reconsideration. In the said collection letter, the Commissioner not only demanded that the petitioner pay the amount of P1,556,623.93 as deficiency income and value-added taxes, but it likewise gave a warning that in the event of petitioner's failure to pay, the Commissioner would be constrained to enforce the collection thereof by means of the remedies provided for by law. Thus, not only was the Collection Letter signed for and in behalf of the Commissioner, but it likewise had the Commissioner's so-called 'finality' which is the subject of the present appeal before this Court.

In this regard, petitioner should have elevated its appeal to this Court within thirty (30) days from receipt of the collection letter, or on June 3, 2005. When petitioner filed the instant Petition for Review on June 24, 2005, which is twenty one (21) days late, clearly, its right to appeal had already lapsed.

'[T]he right to appeal is neither a natural right nor a part of due process. It is merely a procedural remedy of statutory origin, a remedy that may be exercised only in the manner prescribed by the provisions of law authorizing such exercise. Hence the legal requirements must be strictly complied with' (Philippine Rabbit Bus Lines, Inc. vs. People, 427 SCRA 456 [2004]). As in this case, appeal must be availed of within the period and in the manner provided for by law; otherwise, upon the lapse of the period to appeal from a decision or final order and no appeal has been perfected by the aggrieved party, such final order or decision ipso facto becomes final and executory. The appellate court does not acquire appellate jurisdiction over a belated appeal from the said order or decision (Vda de Cardona vs. Amansec, 427 SCRA 758 [2004])."

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed August 4, 2006 and December 4, 2006 Resolutions of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the August 4, 2006 and December 4, 2006 Resolutions of the *CTA Second Division* are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
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

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