REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1954** (CTA Case No. 9022)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
	Promulgated:
NEW YORK BAY PHILIPPINES, INC., *Respondent.*	JUN 30 2020 1:12 p.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR), involving respondent New York Bay Philippines, Inc.'s claim for refund of excess and unutilized input value added tax (VAT) on its purchases of goods and services attributable to zero-rated sales for the four quarters of calendar year 2013.

The Facts

The Court in Division recites the antecedents, as follows:

> Petitioner [now, respondent] New York Bay Philippines, Inc. is a domestic corporation with principal place of business at Unit 2102, 21st Floor Antel Global Corporate Center, Julia Vargas Avenue, Pasig City. It is

[1] *Rollo*, pp. 1-12.

registered with the Securities and Exchange Commission (SEC), and is engaged in financial holding activities, specifically, as a remittance service provider, either through electronic bank transfers, door-to-door, and other kinds of fund transfer. Petitioner is a VAT registered taxpayer of Revenue District Office (RDO) No. 43A, Bureau of Internal Revenue (BIR) with Taxpayer Identificatio No. (TIN) 000-217-994-000, as indicated in its Certificate of Registration No. 3RC0000682520.

On the other hand, respondent [now, petitioner] is the Commissioner of Internal Revenue (CIR), who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC), or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

During the four quarters of calendar year (CY) 2013, petitioner allegedly rendered services in the Philippines to non-resident foreign corporations not engaged in business in the country, the consideration for which were paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of *Bangko Sentral ng Pilipinas* (BSP).

Petitioner accumulated input VAT credits on its domestic purchases of goods and services attributable to its zero-rated sales of services for the four quarters of CY 2013 amounting to P31,232,399.52.

Subsequently, petitioner filed an administrative claim for refund/issuance of a tax credit certificate with the BIR RDO No. 43A, of its alleged excess and unutilized input VAT for the four quarters of CY 2013 in the total amount of P31,232,399.52.

Due to respondent's inaction to the said administrative claim for refund, petitioner filed the instant Petition for Review before this Court on March 31, 2015.[2]

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[2] *Rollo*, Decision dated March 26, 2018, pp. 30-32.

After trial, the Court in Division rendered its Decision dated March 26, 2018, as follows:

> **WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **P30,806,862.05**, representing its excess and unutilized input value-added tax on purchases of goods and services attributable to its zero-rated sales for the four quarters of CY 2013.
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> **SO ORDERED**.[3]

On April 25, 2018, the CIR filed a *Motion to Admit Respondent's Motion for Reconsideration.*[4] While initially granted in the Resolution dated May 10, 2018,[5] the same was subsequently reversed and set aside in the Resolution dated July 19, 2018.[6]

On August 6, 2018, the CIR filed his *Motion for Reconsideration (Re: Resolution dated July 19, 2018).*[7] The CIR prayed for the reversal of the July 19, 2018 Resolution, and that the May 10, 2018 Resolution be reinstated – thereby admitting the CIR's *Motion for Reconsideration* of the Decision dated March 26, 2018.

On October 2, 2018, the Court in Division rendered its Resolution,[8] denying the CIR's *Motion for Reconsideration (Re: Resolution dated July 19, 2018).*

On October 19, 2018, the CIR filed his Petition for Review[9] before the Court *En Banc*, praying that the Court reconsider the Resolution dated October 2, 2018 and the Decision dated March 26, 2018.

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[3] *Rollo*, Decision dated March 26, 2018, pp. 50-51.
[4] Docket, CTA Case No. 9022, Vol. 3, pp. 1155-1169.
[5] Docket, Vol. 3, p. 1171.
[6] Docket, Vol. 3, pp. 1182-1185.
[7] Docket, Vol. 3, pp. 1186-1191.
[8] *Rollo*, pp. 14-17.
[9] *Rollo*, pp. 1-12.

On February 6, 2018, respondent New York Bay Philippines, Inc. filed its Comment (Re: Petition for Review dated October 19, 2018).[10]

The case was deemed submitted for decision on May 29, 2019,[11] considering the Memorandum[12] filed by respondent on March 29, 2019, and Records Verification[13] dated April 15, 2019 that petitioner failed to file his memorandum.

Issue

The CIR submits the following issue in his Petition for Review:

> Whether or not New York Bay Philippines, Inc. is entitled to a refund or issuance of a tax credit certificate (TCC) for the total amount of Php31,232,399.52 allegedly representing excess and unutilized input value-added tax (VAT) on purchases of goods and services attributable to zero-rated sales for the four (4) quarters of calendar year (CY) 2013.

The CIR's arguments

The CIR argues that New York Bay's claim for refund/TCC is bereft of factual and legal basis. The CIR states that taxes are essential to government's very existence, for this reason, the right of taxation cannot be easily surrendered and statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.

The CIR states that New York Bay should prove the following:

a. The registration requirements of a VAT taxpayer in compliance with the Revenue Regulations No. 7-2012

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[10] *Rollo*, pp. 78-90.
[11] *Rollo*, pp. 118-119.
[12] *Rollo*, pp. 94-115.
[13] *Rollo*, p. 116.

in relation to Section 236(A),(B),(C) and (D) of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 54-2014, otherwise, there would be no sufficient compliance with the filing of an administrative application for refund which is a condition sine qua non prior to the filing of a judicial claim, in accordance with Section 112 of the Tax Code, as amended. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, [New York Bay]'s failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. The input VAT of Php31,232,399.52 allegedly incurred by [New York Bay] for calendar year 2013 have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. [New York Bay]'s administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) were filed within the period provided in Sections 112(A) and (C) of the Tax Code, as amended;

f. That [New York Bay]'s purchases of capital goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the Tax Code, as amended, land pursuant to Section 4.110-7 of Revenue Regulations No. 14-2005.

The CIR also cites the requisites for a successful claim for tax refund/TCC of excess input VAT attributable to zero-rated or effectively zero-rated sales, as follows:

1. The taxpayer is VAT-registered;

2. The taxpayer is engaged in zero-rated or effectively zero-rated sales;

3. The input taxes are due or paid;

4. The input taxes are not transitional input taxes;

5. The input taxes have not been applied against output taxes during and in the succeeding quarters;

6. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

7. For zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;

8. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly or entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and,

9. The claim is filed within two years after the close of the taxable quarter when such sales were made.

The CIR states that New York Bay was not able to comply with the above-mentioned requirements. Further, the CIR alleges that New York Bay failed to sufficiently prove and demonstrate that the subject tax was erroneously or illegally collected, hence, not refundable.

Finally, the CIR states that the Resolution dated May 10, 2018, which admitted the CIR's belatedly filed Motion for Reconsideration, should not be reversed.

New York Bay Philippines, Inc.'s arguments

New York Bay states that the ground relied upon by the CIR are devoid of any factual or legal basis, considering that (1) the CTA-Division correctly ruled that the reasons cited by the CIR for his failure to timely file his Motion for Reconsideration of the Original Decision do not merit the relaxation of the rules of procedure; and (2) New York Bay has sufficiently proven that it has complied with all the requirements for the refund/issuance of TCC for its excess and unutilized input VAT on purchases of goods and services attributable to its zero-rated sales for the four quarters of CY 2013.

New York Bay also states that the arguments raised in the CIR's Petition for Review are mere reiterations of the arguments discussed already discussed before the CTA-Division. Further, the arguments raised in the CIR's Petition for Review are but general allegations on the requirements for the grant of a refund or issuance of a tax credit certificate. The CIR has not made any assertion as to how New York Bay allegedly failed to comply with the requirements entitling it to a refund of its unutilized input VAT.

Ruling of the Court

The Petition for Review lacks merit.

The Court *En Banc* finds no compelling reason to reverse nor modify the findings of the Court in Division that the CIR's *Motion for to Admit Respondent's Motion for Reconsideration* filed on April 25, 2018 with the attached *Motion for Reconsideration* was filed out of time.

Under Rule 15, Section 1 of the Revised Rules of the Court of Tax Appeals (RRCTA), a motion for reconsideration must be filed within fifteen (15) days from receipt of the decision, resolution or order of the CTA.[14]

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[14] Rule 15 Motion for Reconsideration or New Trial
SECTION 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall file a motion for reconsideration or new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question.

The rule is and has been that the period for filing a motion for reconsideration is non-extendible.[15]

In the instant case, it is not disputed that the CIR received the Decision dated March 26, 2018 on April 4, 2018. It is also undisputed that the filed his *Motion for to Admit Respondent's Motion for Reconsideration* only on April 25, 2018, which is beyond the 15-day period for filing a motion for reconsideration.

The CIR claims that the belated filing of the motion for reconsideration was because of severe debilitating pain due to herniated and dessicated discs that caused CIR's counsel lower back pain that radiates to the legs.[16] It was also alleged that the delay was exacerbated by the heavy volume of work.[17]

In an analogous situation, the Supreme Court ruled:

> Counsel for petitioner states that the reason for the delay in filing his client's motion for reconsideration is that he (counsel) had to leave for the United States to attend to his ailing wife at a hospital thereat. While laudable, the excuse given is not justification to exempt counsel from complying with the rules, more so in the light of the fact that a law firm represents petitioner in this case.[18]

Thus, We reiterate with approval the disquisition of the Court in Division, as follows:

> Admittedly, respondent [CIR] belatedly filed his Motion for Reconsideration of the assailed Decision of March 26, 2018 on April 25, 2018. Moreover, respondent failed to give sufficient ground to justify the requested leniency in the application of the Rules. It was through his own fault and inattention to his case, that he lost the opportunity to avail of the adequate remedy under the rules.
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> Further, his allegation that his counsel fell ill is also not supported by any evidence, i.e. results of X-ray

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[15] *Apex Mining Co., Inc. v. Commissioner of Internal Revenue*, G.R. No. 122472, October 20, 2005, citing *Phil. Coconut Authority v. Garrido*, 374 SCRA 154, 159 (2002).
[16] Docket, Vol. 3, CIR's *Motion to Admit Respondent's Motion for Reconsideration*, p. 1155.
[17] *Id.*
[18] *Apex Mining Co., Inc. v. Commissioner of Internal Revenue*, G.R. No. 122472, October 20, 2005.

> or an MRI. Also, as held in the assailed Resolution, heavy workload is by no means excusable, lest there would be no end to litigation as it will be invoked by any law practitioner who failed to meet his deadline.
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> It should be emphasized that the resort to a liberal application, or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice. As held in *Marohomsalic v. Cole*, [w]hile procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.
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> Finally, [t]he right to appeal is not a natural right or part of due process; it is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must strictly comply with the requirements of the rules, and failure to do so leads to the loss of the right to appeal.[19] (*Citations omitted*)

Considering that no valid motion for reconsideration was filed, the Decision dated March 26, 2018 in CTA Case No. 9022 has become final and no longer reviewable on appeal. Thus, we will no longer discuss the other issues raised by the CIR.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[19] *Rollo,* Division Resolution dated October 2, 2018, pp. 15-16.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice