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THIRD DIVISION

[G.R. No. 181845, August 04, 2009]

THE CITY OF MANILA, LIBERTY M. TOLEDO, IN HER CAPACITY AS THE TREASURER OF MANILA AND JOSEPH SANTIAGO, IN HIS CAPACITY AS THE CHIEF OF THE LICENSE DIVISION OF CITY OF MANILA, PETITIONERS, VS. COCA-COLA BOTTLERS PHILIPPINES, INC., RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

This case is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Civil Procedure seeking to review and reverse the Decision[1] dated 18 January 2008 and Resolution[2] dated 18 February 2008 of the Court of Tax Appeals *en banc* (CTA *en banc*) in C.T.A. EB No. 307. In its assailed Decision, the CTA *en banc* dismissed the Petition for Review of herein petitioners City of Manila, Liberty M. Toledo (Toledo), and Joseph Santiago (Santiago); and affirmed the Resolutions dated 24 May 2007,[3] 8 June 2007,[4] and 26 July 2007,[5] of the CTA First Division in C.T.A. AC No. 31, which, in turn, dismissed the Petition for Review of petitioners in said case for being filed out of time. In its questioned Resolution, the CTA *en banc* denied the Motion for Reconsideration of petitioners.

Petitioner City of Manila is a public corporation empowered to collect and assess business taxes, revenue fees, and permit fees, through its officers, petitioners Toledo and Santiago, in their capacities as City Treasurer and Chief of the Licensing Division, respectively. On the other hand, respondent Coca-Cola Bottlers Philippines, Inc. is a corporation engaged in the business of manufacturing and selling beverages, and which maintains a sales office in the City of Manila.

The case stemmed from the following facts:

Prior to 25 February 2000, respondent had been paying the City of Manila local business tax only under Section 14 of Tax Ordinance No. 7794,[6] being expressly exempted from the business tax under Section 21 of the same tax ordinance. Pertinent provisions of Tax Ordinance No. 7794 provide:

> **Section 14.** - Tax on Manufacturers, Assemblers and Other Processors. - There is hereby imposed a graduated tax on manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with any of the following schedule:
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> x x x x

over P6,500,000.00 up to

P25,000,000.00 -- P36,000.00 plus 50% of 1%
in excess of
P6,500,000.00

x x x x

Section 21. - Tax on Businesses Subject to the Excise, Value-Added or Percentage Taxes under the NIRC. - On any of the following businesses and articles of commerce subject to excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of FIFTY PERCENT (50%) of ONE PERCENT (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:

(A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise; as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said Code.

x x x x

(D) Excisable goods subject to VAT

(1) Distilled spirits
(2) Wines

x x x x

(8) Coal and coke
(9) Fermented liquor, brewers' wholesale price, excluding the ad valorem tax

x x x x

PROVIDED, that all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof.

Petitioner City of Manila subsequently approved on 25 February 2000, Tax Ordinance No. 7988,[7] amending certain sections of Tax Ordinance No. 7794, particularly: (1) Section 14, by increasing the tax rates applicable to certain establishments operating within the territorial jurisdiction of the City of Manila; and (2) Section 21, by deleting the *proviso* found therein, which stated "that all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof." Petitioner City of Manila approved only after a year, on 22 February 2001, another tax ordinance, Tax Ordinance No. 8011, amending Tax

Ordinance No. 7988.

Tax Ordinances No. 7988 and No. 8011 were later declared by the Court null and void in *Coca-Cola Bottlers Philippines, Inc. v. City of Manila*[8] (*Coca-Cola* case) for the following reasons: (1) Tax Ordinance No. 7988 was enacted in contravention of the provisions of the Local Government Code (LGC) of 1991 and its implementing rules and regulations; and (2) Tax Ordinance No. 8011 could not cure the defects of Tax Ordinance No. 7988, which did not legally exist.

However, before the Court could declare Tax Ordinance No. 7988 and Tax Ordinance No. 8011 null and void, petitioner City of Manila assessed respondent on the basis of Section 21 of Tax Ordinance No. 7794, as amended by the aforementioned tax ordinances, for deficiency local business taxes, penalties, and interest, in the total amount of P18,583,932.04, for the third and fourth quarters of the year 2000. Respondent filed a protest with petitioner Toledo on the ground that the said assessment amounted to double taxation, as respondent was taxed twice, *i.e.*, under Sections 14 and 21 of Tax Ordinance No. 7794, as amended by Tax Ordinances No. 7988 and No. 8011. Petitioner Toledo did not respond to the protest of respondent.

Consequently, respondent filed with the Regional Trial Court (RTC) of Manila, Branch 47, an action for the cancellation of the assessment against respondent for business taxes, which was docketed as Civil Case No. 03-107088.

On 14 July 2006, the RTC rendered a Decision[9] dismissing Civil Case No. 03-107088. The RTC ruled that the business taxes imposed upon the respondent under Sections 14 and 21 of Tax Ordinance No. 7988, as amended, were not of the same kind or character; therefore, there was no double taxation. The RTC, though, in an Order[10] dated 16 November 2006, granted the Motion for Reconsideration of respondent, decreed the cancellation and withdrawal of the assessment against the latter, and barred petitioners from further imposing/assessing local business taxes against respondent under Section 21 of Tax Ordinance No. 7794, as amended by Tax Ordinance No. 7988 and Tax Ordinance No. 8011. The 16 November 2006 Decision of the RTC was in conformity with the ruling of this Court in the *Coca-Cola* case, in which Tax Ordinance No. 7988 and Tax Ordinance No. 8011 were declared null and void. The Motion for Reconsideration of petitioners was denied by the RTC in an Order[11] dated 4 April 2007. Petitioners received a copy of the 4 April 2007 Order of the RTC, denying their Motion for Reconsideration of the 16 November 2006 Order of the same court, on 20 April 2007.

On 4 May 2007, petitioners filed with the CTA a Motion for Extension of Time to File Petition for Review, praying for a 15-day extension or until 20 May 2007 within which to file their Petition. The Motion for Extension of petitioners was docketed as C.T.A. AC No. 31, raffled to the CTA First Division.

Again, on 18 May 2007, petitioners filed, through registered mail, a Second Motion for Extension of Time to File a Petition for Review, praying for another 10-day extension, or until 30 May 2007, within which to file their Petition.

On 24 May 2007, however, the CTA First Division already issued a Resolution dismissing C.T.A. AC No. 31 for failure of petitioners to timely file their Petition for

Review on 20 May 2007.

Unaware of the 24 May 2007 Resolution of the CTA First Division, petitioners filed their Petition for Review therewith on 30 May 2007 *via* registered mail. On 8 June 2007, the CTA First Division issued another Resolution, reiterating the dismissal of the Petition for Review of petitioners.

Petitioners moved for the reconsideration of the foregoing Resolutions dated 24 May 2007 and 8 June 2007, but their motion was denied by the CTA First Division in a Resolution dated 26 July 2007. The CTA First Division reasoned that the Petition for Review of petitioners was not only filed out of time -- it also failed to comply with the provisions of Section 4, Rule 5; and Sections 2 and 3, Rule 6, of the Revised Rules of the CTA.

Petitioners thereafter filed a Petition for Review before the CTA *en banc*, docketed as C.T.A. EB No. 307, arguing that the CTA First Division erred in dismissing their Petition for Review in C.T.A. AC No. 31 for being filed out of time, without considering the merits of their Petition.

The CTA *en banc* rendered its Decision on 18 January 2008, dismissing the Petition for Review of petitioners and affirming the Resolutions dated 24 May 2007, 8 June 2007, and 26 July 2007 of the CTA First Division. The CTA *en banc* similarly denied the Motion for Reconsideration of petitioners in a Resolution dated 18 February 2008.

Hence, the present Petition, where petitioners raise the following issues:

I. WHETHER OR NOT PETITIONERS SUBSTANTIALLY COMPLIED WITH THE REGLEMENTARY PERIOD TO TIMELY APPEAL THE CASE FOR REVIEW BEFORE THE [CTA DIVISION].

II. WHETHER OR NOT THE RULING OF THIS COURT IN THE EARLIER [*COCA-COLA CASE*] IS DOCTRINAL AND CONTROLLING IN THE INSTANT CASE.

III. WHETHER OR NOT PETITIONER CITY OF MANILA CAN STILL ASSESS TAXES UNDER [SECTIONS] 14 AND 21 OF [TAX ORDINANCE NO. 7794, AS AMENDED].

IV. WHETHER OR NOT THE ENFORCEMENT OF [SECTION] 21 OF THE [TAX ORDINANCE NO. 7794, AS AMENDED] CONSTITUTES DOUBLE TAXATION.

Petitioners assert that Section 1, Rule 7[12] of the Revised Rules of the CTA refers to certain provisions of the Rules of Court, such as Rule 42 of the latter, and makes them applicable to the tax court. Petitioners then cannot be faulted in relying on the provisions of Section 1, Rule 42[13] of the Rules of Court as regards the period for filing a Petition for Review with the CTA in division. Section 1, Rule 42 of the Rules of Court provides for a 15-day period, reckoned from receipt of the adverse decision of the trial court, within which to file a Petition for Review with the Court of Appeals.

The same rule allows an additional 15-day period within which to file such a Petition; and, only for the most compelling reasons, another extension period not to exceed 15 days. Petitioners received on 20 April 2007 a copy of the 4 April 2007 Order of the RTC, denying their Motion for Reconsideration of the 16 November 2006 Order of the same court. On 4 May 2007, believing that they only had 15 days to file a Petition for Review with the CTA in division, petitioners moved for a 15-day extension, or until 20 May 2007, within which to file said Petition. Prior to the lapse of their first extension period, or on 18 May 2007, petitioners again moved for a 10-day extension, or until 30 May 2007, within which to file their Petition for Review. Thus, when petitioners filed their Petition for Review with the CTA First Division on 30 May 2007, the same was filed well within the reglementary period for doing so.

Petitioners argue in the alternative that even assuming that Section 3(a), Rule 8[14] of the Revised Rules of the CTA governs the period for filing a Petition for Review with the CTA in division, still, their Petition for Review was filed within the reglementary period. Petitioners call attention to the fact that prior to the lapse of the 30-day period for filing a Petition for Review under Section 3(a), Rule 8 of the Revised Rules of the CTA, they had already moved for a 10-day extension, or until 30 May 2007, within which to file their Petition. Petitioners claim that there was sufficient justification in equity for the grant of the 10-day extension they requested, as the primordial consideration should be the substantive, and not the procedural, aspect of the case. Moreover, Section 3(a), Rule 8 of the Revised Rules of the CTA, is silent as to whether the 30-day period for filing a Petition for Review with the CTA in division may be extended or not.

Petitioners also contend that the *Coca-Cola* case is not determinative of the issues in the present case because the issue of nullity of Tax Ordinance No. 7988 and Tax Ordinance No. 8011 is not the *lis mota* herein. The *Coca-Cola* case is not doctrinal and cannot be considered as the law of the case.

Petitioners further insist that notwithstanding the declaration of nullity of Tax Ordinance No. 7988 and Tax Ordinance No. 8011, Tax Ordinance No. 7794 remains a valid piece of local legislation. The nullity of Tax Ordinance No. 7988 and Tax Ordinance No. 8011 does not effectively bar petitioners from imposing local business taxes upon respondent under Sections 14 and 21 of Tax Ordinance No. 7794, as they were read prior to their being amended by the foregoing null and void tax ordinances.

Petitioners finally maintain that imposing upon respondent local business taxes under both Sections 14 and 21 of Tax Ordinance No. 7794 does not constitute direct double taxation. Section 143 of the LGC gives municipal, as well as city governments, the power to impose business taxes, to wit:

> SECTION 143. **Tax on Business**. - The municipality may impose taxes on the following businesses:
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> (a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule: