

THIRD DIVISION

[G.R. No. 111184, August 12, 1996]

MAGSAYSAY LINES, INC., BALIWAG NAVIGATION, INC., FIM LIMITED OF THE MARDEN GROUP (HK), AND NATIONAL DEVELOPMENT COMPANY, PETITIONERS, VS. HON. COURT OF APPEALS, AND THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

DECISION

PANGANIBAN, J.:

Did the respondent Court act correctly when it set aside its own Resolution dismissing a petition for review on certiorari which, according to the petitioners, had been filed "out of time" by the respondent Commissioner of Internal Revenue? Should the technical rules on reglementary periods for appeal be applied stringently as to deprive the Government of appeal from an adverse ruling on its cause of action involving a substantial tax refund?

These questions are addressed by the Court in resolving the instant petition for certiorari and prohibition under Rule 65, seeking to annul the following Resolutions issued by the respondent Court of Appeals,^[1] in CA-G.R. S.P. No. 29994 entitled "Commissioner of Internal Revenue vs. Magsaysay Lines, Inc., et al.", to wit:

1) Resolution^[2] dated February 3, 1993 which ruled that:

"As prayed for, petitioner is hereby granted an extension of thirty (30) days from January 7, 1993 or until February 6, 1993 within which to file the petition for review on certiorari in the above entitled case with a WARNING that no further extension shall be entertained."

2) Resolution^[3] dated July 27, 1993 which reads as follows:

"Before Us is a motion for reconsideration filed by counsel for the petitioner (respondent Commissioner herein) from Our resolution dated May 3, 1993 dismissing the petition for review for failure to file the petition within the extension granted.

After a careful study of the grounds relied upon by the petitioner in support of the motion vis-a-vis the opposition, We find cogent reason to grant the same, hence, Our resolution dated May 3, 1993 is hereby LIFTED and SET ASIDE in the interest of substantial justice.

Accordingly, private respondents are hereby directed to file its (sic) comment on the petition for review within ten (10) days from notice hereof."

The Antecedent Facts

Petitioners filed on April 10, 1989 an "Appeal and Petition for Refund" before the Court of Tax Appeals (CTA), followed by a "Supplemental Petition for Review" on July 14, 1989, praying for the reversal of VAT Ruling Nos. 395-88, 568-88 and 007-89 and the refund of P15,120,000.00, representing "erroneously paid" 10% value-added tax on the sale through public bidding of five (5) vessels by the NDC to the group of investors composed of Magsaysay Lines, Inc., Baliwag Navigation and FIM Limited. The case was docketed as CTA No. 4354 and captioned "Magsaysay Lines, Inc., et al. vs. Commissioner of Internal Revenue."

On April 27, 1992, the CTA rendered a decision ordering respondent Commissioner "to refund in favor of petitioners Magsaysay Lines, Inc., Baliwag Navigation, Inc., and FIM Limited of the Marden Group (HK) for and in behalf of the National Development Corporation the VAT paid amounting to P15,120,000.00 under Confirmation of Receipt No. B 16374703 dated March 16, 1989."

Respondent Commissioner's motion for reconsideration was denied by the CTA in a resolution dated December 9, 1992, copy of which was received by respondent Commissioner on January 6, 1993.

Immediately upon receipt of said resolution, respondent Commissioner, through the Office of the Solicitor General (OSG), filed on the same day, January 6, 1993, a motion before respondent appellate court praying for an "extension of thirty (30) days from January 7, 1993 or until February 6, 1993 within which to file the petition for review on certiorari."^[4]

However, on February 5, 1993, the Office of the Solicitor General filed on behalf of respondent Commissioner a second motion requesting another "extension of thirty (30) days from February 6, 1993 or until March 8, 1993, within which to file a petition for review." As shown by the stamped proof of receipt on the face of the motion, it was received by the respondent appellate court on February 5, 1993.^[5]

Only after it had filed the second motion did the OSG receive, on February 11, 1993, the first assailed resolution issued by respondent appellate court, dated February 3, 1993, which granted respondent commissioner's first motion for extension "with a warning that no further extensions shall be entertained."

Thus, in its Manifestation and Motion dated February 16, 1993, respondent Commissioner thru the OSG prayed that the second motion for extension dated February 5, 1993 be granted in view of the following considerations:

"Considering that said resolution was received by the OSG after the requested period of the first motion for extension had lapsed, the OSG is now left with no recourse but to seek the kind indulgence of this Honorable Court to grant petitioner's second motion for extension."

On March 8, 1993, or within the period prayed for by respondent Commissioner in its second motion for extension, the petition for review (dated March 5, 1993) was filed through registered mail.

In its Resolution^[6] of May 3, 1993, respondent appellate court dismissed the petition for review on the ground that -

"Considering Our resolution dated February 3, 1993 WARNING petitioner that no further extension shall be entertained, the motion for extension of time dated February 5, 1993 is hereby DENIED, hence, the petition for review filed on March 8, 1993 is hereby DENIED ADMISSION.

ACCORDINGLY, the instant petition for review is hereby DISMISSED pursuant to Section 1 (f), Rule 50 of the Revised Rules of Court."

However, respondent Commissioner's motion for reconsideration of the above ruling was granted by the appellate court in its Resolution dated July 27, 1993 - the second of the herein assailed Resolutions - which set aside the said dismissal and directed the private respondents (petitioners herein) to comment on the reinstated petition.

The Issue

Hence, petitioners filed the instant petition alleging this reversible error:^[7]

"The questioned resolutions of the Respondent Court of Appeals x x x are erroneous as a matter of law, having been rendered without jurisdiction and contrary to the applicable rules and doctrines firmly established x x x in a long line of decisions."

The Court's Ruling

The thrust of the instant petition is that, since the mere filing by respondent Commissioner of the first motion for extension of time, and the pendency thereof, did not suspend the tolling of the reglementary period to appeal; and since that period elapsed on January 7, 1993 without any such appeal having been filed, and without respondent Commissioner's first motion for extension having been granted by the appellate Court prior to the expiration of said reglementary period, therefore the decision of the Court of Tax Appeals dated April 27, 1992, had become "final, conclusive and unappealable," and thus, the appellate court "had been divested of all authority and jurisdiction to take cognizance of the case or to act on the appeal."

^[8]

Petitioners' position is devoid of merit, and must perforce fail. As pointed out by the Solicitor General, the petition for review pending before the respondent Court had been filed in accordance with this Court's Circular No. 1-91, dated February 27, 1991, which prescribed the "Rules Governing Appeals to the Court of Appeals from a Final Order or Decision of the Court of Tax Appeals and Quasi-Judicial Agencies." Paragraph 4 of said Circular provides:

"4. PERIOD OF APPEAL. - The appeal shall be taken within fifteen (15) days from notice of the ruling, award, order, decision, or judgment or from the date of its last publication, if publication is required by law for its effectivity. One (1) motion for reconsideration of said ruling, award, order, decision, or judgment may be allowed. If the motion is denied, the movant may appeal during the remaining period for appeal reckoned from notice of the resolution of denial." (italics supplied)

Pursuant to the aforementioned Circular, where an aggrieved party files a motion for reconsideration from an adverse decision of the CTA, he has only the balance of the reglementary period within which to appeal, reckoned from receipt of notice of the resolution denying his motion for reconsideration. There was no violation of said rule in the instant case. Here, the respondent Commissioner received on January 6, 1993 the CTA resolution denying reconsideration, and had only one (1) day left within which to perfect his appeal. On the very day he received said resolution, he filed the (first) motion for extension for thirty days.

While Circular No. 1-91 is silent as to whether a motion for extension of time to file a petition for review with the Court of Appeals may be permitted, nevertheless, this Court in *Liboro vs. Court of Appeals*^[9] (promulgated on January 29, 1993, or at about the very time the present controversy was taking shape in the respondent Court) already ruled that such motion is allowed and should be granted.

Previously, we had held in *Lacsamana vs. Second Special Cases Division of the Intermediate Appellate Court*^[10] (which was promulgated in 1986, prior to the issuance of Circular No. 1-91) that:

"The Court rules, for the guidance of Bench and Bar, that a motion for extension of time to file a petition for review under Section 22 of The Judiciary Reorganization Act (Batas Pambansa Blg. 129) and Section 22(b) of the Interim Rules, may properly be filed with and granted by the Intermediate Appellate Court (now renamed Court of Appeals).

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3) APPEALS BY PETITION FOR REVIEW TO THE COURT OF APPEALS.

The final judgment or order of a regional trial court in an appeal from the final judgment or order of a metropolitan trial court, municipal trial court and municipal circuit trial court, may be appealed to the Court of Appeals through a petition for review in accordance with Section 22 of BP No. 129 and Section 22(b) of the Interim Rules, or to this Court through a petition for review on certiorari in accordance with Rule 45 of the Rules of Court and Section 25 of the Interim Rules. The reason for extending the period for the filing of a record on appeal is also applicable to the filing of a petition for review with the Court of Appeals. *The period for filing a petition for review is fifteen days.* If a motion for reconsideration is filed with and denied by a regional trial court, the movant has only (the) remaining period within which to file a petition for review. Hence, it *may be necessary* to file a *motion* with the Court of Appeals *for extension of time to file such petition for review.*" (Italics are part of original text.)

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6) PERIOD OF EXTENSION OF TIME TO FILE PETITION FOR REVIEW.

Beginning one month after the promulgation of this Decision, an extension of only fifteen days for filing a petition for review may be granted by the Court of Appeals, save in exceptionally meritorious cases.