

THIRD DIVISION

[G.R. No. 196681, June 27, 2018]

**CITY OF MANILA AND OFFICE OF THE CITY TREASURER OF
MANILA, PETITIONERS, V. COSMOS BOTTLING CORPORATION,
RESPONDENT.**

DECISION

MARTIRES, J.:

The filing of a motion for reconsideration or new trial to question the decision of a division of the Court of Tax Appeals (CTA) is mandatory. An appeal brought directly to the CTA En Banc is dismissible for lack of jurisdiction.

In local taxation, an assessment for deficiency taxes made by the local government unit may be protested before the local treasurer without necessity of payment under protest. But if payment is made simultaneous with or following a protest against an assessment, the taxpayer may subsequently maintain an action in court, whether as an appeal from assessment or a claim for refund, so long as it is initiated within thirty (30) days from either decision or inaction of the local treasurer on the protest.

THE CASE

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the 16 February 2011^[1] and 20 April 2011^[2] Resolutions of the CTA En Banc. The 16 February 2011 Resolution dismissed the petition for review of the petitioners for failure to file a motion for reconsideration or new trial before the CTA Third Division (*CTA Division*); while the 20 April 2011 Resolution denied the motion for reconsideration of the first assailed resolution. The CTA Division's 9 November 2010 Decision^[3] ruled in favor of respondent Cosmos Bottling Corporation (*Cosmos*) by partially granting its appeal from the decision of the Regional Trial Court, Branch 49, Manila (*RTC*), in Civil Case No. 01-116881 entitled *Cosmos Bottling Corporation v. City of Manila and Liberty Toledo (City Treasurer of Manila)*.

THE FACTS

Antecedents

The CTA Division, narrates the antecedents as follows:

For the first quarter of 2007, the City of Manila assessed [Cosmos] local business taxes and regulatory fees in the total amount of P1,226,781.05, as contained in the Statement of Account dated January 15, 2007. [Cosmos] protested the assessment through a letter dated January 18, 2007, arguing that Tax Ordinance Nos. 7988 and 8011, amending the Revenue Code of Manila (RCM), have been declared null and void. [Cosmos] also argued that the collection of local business tax under

Section 21 of the RCM in addition to Section 14 of the same code constitutes double taxation.

[Cosmos] also tendered payment of only P131,994.23 which they posit is the correct computation of their local business tax for the first quarter of 2007. This payment was refused by the City Treasurer. [Cosmos] also received a letter from the City Treasurer denying their protest, stating as follows:

In view thereof, this Office, much to our regret, has to deny your protest and that any action taken thereon will be sub-judice. Rest assured, however, that once we receive a final ruling on the matter, we will act in accordance therewith. [Cosmos] was thus constrained to pay the assessment of P1,226,781.05 as evidenced by Official Receipt No. BAJ-005340 dated February 13, 2007. On March 1, 2007, [Cosmos] filed a claim for refund of P1,094,786.82 with the Office of the City Treasurer raising the same grounds as discussed in their protest.

On March 8, 2007, [Cosmos] filed its complaint with the RTC of Manila praying for the refund or issuance of a tax credit certificate in the amount of P1,094,786.82. The RTC in its decision ruled in favor of [Cosmos] but denied the claim for refund. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered enjoining the respondent Treasurer of the City of Manila to refrain henceforth from imposing tax under Section 21 of the Revenue Code of Manila if it had already imposed tax on .manufacturers under Section 14 of the same Code. As to the prayer in the petition for refund, the same is denied.

[Cosmos'] motion for partial reconsideration was also denied, hence, [the] Petition for Review [before the CTA].^[4]

The petition for review was raffled to the CTA Division and docketed as CTA A.C. No. 60.

The Ruling of the CTA Division

The CTA Division essentially ruled that the collection by the City Treasurer of Manila of local business tax under both Section 21 and Section 14 of the Revenue Code of Manila constituted double taxation.^[5] It also ruled that the City Treasurer cannot validly assess local business tax based on the increased rates under Tax Ordinance Nos. 7988 and 8011 after the same have been declared null and void.^[6] Finally, the court held that Cosmos Bottling Corporation's (*Cosmos*) local business tax liability for the calendar year 2007 shall be computed based on the gross sales or receipts for the year 2006.^[7]

The dispositive portion of the decision of the CTA Division reads:

WHEREFORE, finding merit in the instant Petition for Review, the same is hereby granted. The assailed Decision dated April 14, 2009 of the Regional Trial Court of Manila, Branch 49 in Civil Case No. 07-116881 is hereby PARTIALLY REVERSED. Accordingly, respondent is ENJOINED from imposing the business tax under Section 21 of the Revenue Code of Manila if it had already imposed tax on manufacturers under Section 14 of the same Code. Respondent, furthermore, is ORDERED to REFUND or to issue a TAX CREDIT CERTIFICATE to petitioner the amount of P1,094,786.82, representing excess business taxes collected for the first quarter of year 2007.^[8]

Instead of filing a motion for reconsideration or new trial, the petitioners directly filed with the CTA En Banc a petition for review^[9] praying that the decision of the CTA Division be reversed or set aside.

The Ruling of the CTA En Banc

In its Resolution of 16 February 2011, the CTA En Banc ruled that the direct resort to it without a prior motion for reconsideration or new trial before the CTA Division violated Section 18 of Republic Act (R.A.) No. 1125,^[10] as amended by R.A. No. 9282 and R.A. No. 9503, and Section 1, Rule 8 of the Revised Rules of the CTA (*CTA Rules*).^[11]

The petitioners sought reconsideration, but their motion was denied by the CTA En Banc. Hence, the appeal before this Court.

The Present Petition for Review

The petitioners assigned the following errors allegedly committed by the CTA En Banc:

1. The Honorable CTA En Banc erred in not reconsidering its Order dismissing the case on procedural grounds.
2. The 3rd Division of the CTA committed reversible error when it ruled in favor of respondent Cosmos despite its failure to appeal the assessment within 30 days from receipt of the denial by the City Treasurer.
3. The 3rd Division of the CTA committed grave error when it failed to consider that the assessment subject of this case has already become final and executory and no longer appealable.
4. The 3rd Division of the CTA gravely erred in granting Cosmos' claim despite erroneously filing the instant case under the provision of Section 196 of the LGC.^[12]

On the first ground, the petitioners essentially invoke excusable mistake on the part of their handling lawyer in asking the Court to resolve the case on the merits. They argue that the Court had on many occasions set aside the rules of procedure in order to afford substantial justice.

On the second, third, and fourth grounds, the petitioners claim that Cosmos' remedy was one of protest against assessment as demonstrated by its letter dated 18

January 2007. Being so, Cosmos' adopted remedy should be governed by Section 195 of the Local Government Code (LGC). Pursuant to such provision, Cosmos had only thirty (30) days from receipt of denial of the protest within which to file an appeal before a court of competent jurisdiction. However, Cosmos failed to comply with the period of appeal, conveniently shifting its theory from tax protest to tax refund under Section 196 of the LGC when it later on filed a "claim for refund/tax credit of illegally/erroneously paid taxes" on 1 March 2007. The petitioners, thus, argue that Cosmos had already lost its right to appeal and is already precluded from questioning the denial of its protest.

In its comment,^[13] Cosmos counters that the rules should not be lightly disregarded by harping on substantial justice and the policy of liberal construction. It also insists that it is not Section 195 of the LGC that is applicable to it but Section 196 of the same code.

ISSUES

Whether the CTA En Banc correctly dismissed the petition for review before it for failure of the petitioners to file a motion for reconsideration or new trial with the CTA Division.

Whether a taxpayer who had initially protested and paid the assessment may shift its remedy to one of refund.

OUR RULING

We rule for Cosmos.

I.

The filing of a motion for reconsideration or new trial before the CTA Division is an indispensable requirement for filing an appeal before the CTA En Banc.

The CTA En Banc was correct in interpreting Section 18 of R.A. No. 1125, as amended by R.A. 9282 and R.A. No. 9503, which states –

Section 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of this Act.

A party adversely affected by a resolution of a Division of the CTA on motion for reconsideration or new trial, may file a petition for review with the CTA en banc. (underlining supplied)

as requiring a prior motion for reconsideration or new trial before the same division of the CTA that rendered the assailed decision before filing a petition for review with the CTA En Banc. Failure to file such motion for reconsideration or new trial is cause for dismissal of the appeal before the CTA En Banc.

Corollarily, Section 1, Rule 8 of the CTA Rules provides:

Section 1. *Review of cases in the Court en banc.* — In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division **must** be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (emphasis supplied)

Clear it is from the cited rule that the filing of a motion for reconsideration or new trial is mandatory – not merely directory – as indicated by the word "must."

Thus, in *Asiitrust Development Bank, Inc. v. Commissioner of Internal Revenue (Asiitrust)*,^[14] we declared that a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution in order for the CTA En Banc to take cognizance of an appeal via a petition for review. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory.^[15] In *Commissioner of Customs v. Marina Sales, Inc. (Marina Sales)*,^[16] which was cited in *Asiitrust*, we held:

The rules are clear. Before the CTA En Banc could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned CTA division. Procedural rules are not to be trifled with or be excused simply because their noncompliance may have resulted in prejudicing a party's substantive rights. Rules are meant to be followed. They may be relaxed only for very exigent and persuasive reasons to relieve a litigant of an injustice not commensurate to his careless non-observance of the prescribed rules.^[17] (citations omitted)

The rules are to be relaxed only in the interest of justice and to benefit the deserving.^[18]

We cannot lend to the petitioners the benefit of liberal application of the rules.. As in *Marina Sales*, the rules may be relaxed when to do so would afford a litigant substantial justice. After a cursory examination of the records of the case, we find that the petitioners, as determined by the CTA Division, erroneously assessed and collected from Cosmos local business taxes for the first quarter of 2007; thus, a refund is warranted.

The ruling of the CTA Division is anchored on the following findings:

- (1) the assessment against Cosmos was based on Ordinance Nos. 7988 and 8011 (Revenue Code of Manila);
- (2) the assessment against Cosmos included taxes imposed under Section 21, in addition to Section 14, of the Revenue Code of Manila; and
- (3) the local taxes collected from Cosmos for the first quarter of 2007 was based on its gross receipts in 2005.