

## SECOND DIVISION

**[ G.R. No. 151413, February 13, 2008 ]**

**CAGAYAN VALLEY DRUG CORPORATION, Petitioner, vs.  
COMMISSIONER OF INTERNAL REVENUE, Respondent.**

### DECISION

**VELASCO JR., J.:**

#### The Case

This petition for review under Rule 45 of the Rules of Court seeks the recall of the August 31, 2000 Resolution<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 59778, which dismissed petitioner Cagayan Valley Drug Corporation's petition for review of the April 26, 2000 Decision<sup>[2]</sup> of the Court of Tax Appeals (CTA) in C.T.A. Case No. 5581 on the ground of defective verification and certification against forum shopping.

#### The Facts

Petitioner, a corporation duly organized and existing under Philippine laws, is a duly licensed retailer of medicine and other pharmaceutical products. It operates two drugstores, one in Tuguegarao, Cagayan, and the other in Roxas, Isabela, under the name and style of "Mercury Drug."

Petitioner alleged that in 1995, it granted 20% sales discounts to qualified senior citizens on purchases of medicine pursuant to Republic Act No. (RA) 7432<sup>[3]</sup> and its implementing rules and regulations.

In compliance with Revenue Regulation No. (RR) 2-94, petitioner treated the 20% sales discounts granted to qualified senior citizens in 1995 as deductions from the gross sales in order to arrive at the net sales, instead of treating them as tax credit as provided by Section 4 of RA 7432.

On December 27, 1996, however, petitioner filed with the Bureau of Internal Revenue (BIR) a claim for tax refund/tax credit of the full amount of the 20% sales discount it granted to senior citizens for the year 1995, allegedly totaling to PhP 123,083 in accordance with Sec. 4 of RA 7432.

The BIR's inaction on petitioner's claim for refund/tax credit compelled petitioner to file on March 18, 1998 a petition for review before the CTA docketed as C.T.A. Case No. 5581 in order to forestall the two-year prescriptive period provided under Sec. 230<sup>[4]</sup> of the 1977 Tax Code, as amended. Thereafter, on March 31, 2000, petitioner amended its petition for review.

#### The Ruling of the Court of Tax Appeals

On April 26, 2000, the CTA rendered a Decision dismissing the petition for review for lack of merit.<sup>[5]</sup>

The CTA sustained petitioner's contention that pursuant to Sec. 4 of RA 7432, the 20% sales discounts petitioner extended to qualified senior citizens in 1995 should be treated as tax credit and not as deductions from the gross sales as erroneously interpreted in RR 2-94. The CTA reiterated its consistent holdings that RR 2-94 is an invalid administrative interpretation of the law it purports to implement as it contravenes and does not conform to the standards RA 7432 prescribes.

Notwithstanding petitioner's entitlement to a tax credit from the 20% sales discounts it extended to qualified senior citizens in 1995, the CTA nonetheless dismissed petitioner's action for refund or tax credit on account of petitioner's net loss in 1995. First, the CTA rejected the refund as it is clear that RA 7432 only grants the 20% sales discounts extended to qualified senior citizens as tax credit and not as tax refund. Second, in rejecting the tax credit, the CTA reasoned that while petitioner may be qualified for a tax credit, it cannot be so extended to petitioner on account of its net loss in 1995.

The CTA ratiocinated that on matters of tax credit claim, the government applies the amount determined to be reimbursable after proper verification against any sum that may be due and collectible from the taxpayer. However, if no tax has been paid or if no amount is due and collectible from the taxpayer, then a tax credit is unavailing. Moreover, it held that before allowing recovery for claims for a refund or tax credit, it must first be established that there was an actual collection and receipt by the government of the tax sought to be recovered. In the instant case, the CTA found that petitioner did not pay any tax by virtue of its net loss position in 1995.

Petitioner's Motion for Reconsideration was likewise denied through the appellate tax court's June 30, 2000 Resolution.<sup>[6]</sup>

### **The Ruling of the Court of Appeals**

Aggrieved, petitioner elevated the matter before the CA, docketed as CA-G.R. SP No. 59778. On August 31, 2000, the CA issued the assailed Resolution<sup>[7]</sup> dismissing the petition on procedural grounds. The CA held that the person who signed the verification and certification of absence of forum shopping, a certain Jacinto J. Concepcion, President of petitioner, failed to adduce proof that he was duly authorized by the board of directors to do so.

As far as the CA was concerned, the main issue was whether or not the verification and certification of non-forum shopping signed by the President of petitioner is sufficient compliance with Secs. 4 and 5, Rule 7 of the 1997 Rules of Civil Procedure.

The verification and certification in question reads:

I, JACINTO J. CONCEPCION, of legal age with office address at 2nd Floor, Mercury Drug Corporation, No. 7 Mercury Ave, Bagumbayan, Quezon City, under oath, hereby state that:

1. I am the President of Cagayan Valley Drug Corporation, Petitioner in the above-entitled case and am duly authorized to sign this Verification and Certification of Absence of Forum Shopping by the Board of Director.

x x x x

The CA found no sufficient proof to show that Concepcion was duly authorized by the Board of Directors of petitioner. The appellate court anchored its disposition on our ruling in *Premium Marble Resources, Inc. v. Court of Appeals (Premium)*, that “[i]n the absence of an authority from the Board of Directors, no person, not even the officers of the corporation, can validly bind the corporation.”<sup>[8]</sup>

Hence, we have this petition.

### **The Issues**

Petitioner raises two issues: *first*, whether petitioner’s president can sign the subject verification and certification sans the approval of its Board of Directors. And *second*, whether the CTA committed reversible error in denying and dismissing petitioner’s action for refund or tax credit in C.T.A. Case No. 5581.

### **The Court’s Ruling**

The petition is meritorious.

### ***Premium* not applicable**

As regards the first issue, we find the CA to have erroneously relied on *Premium*. In said case, the issue tackled was not on whether the president of Premium Marble Resources, Inc. was authorized to sign the verification and certification against forum shopping, but rather on which of the two sets of officers, both claiming to be the legal board of directors of Premium, have the authority to file the suit for and in behalf of the company. The factual antecedents and issues in *Premium* are not on all fours with the instant case and is, therefore, not applicable.

With respect to an individual litigant, there is no question that litigants must sign the sworn verification and certification unless they execute a power of attorney authorizing another person to sign it. With respect to a juridical person, Sec. 4, Rule 7 on verification and Sec. 5, Rule 7 on certification against forum shopping are silent as to who the authorized signatory should be. Said rules do not indicate if the submission of a board resolution authorizing the officer or representative is necessary.

### **Corporate powers exercised through board of directors**

It must be borne in mind that Sec. 23, in relation to Sec. 25 of the Corporation Code, clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors. A corporation has a separate and distinct personality from its directors and officers and can only exercise its corporate powers through the board of directors. Thus, it is clear that an individual corporate officer cannot solely exercise any corporate power pertaining to