REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES
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NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **18 March 2015** *which reads as follows*:

"***G.R. No. 206230 – Associated Swedish Steels Philippines, Inc. v. Commissioner of Internal Revenue and Court of Tax Appeals.***

Before this Court is a petition for *certiorari*[1] under Rule 65 of the Rules of Court assailing the August 23, 2012 Decision[2] and the January 21, 2013 Resolution[3] of the Court of Tax Appeals *En Banc (CTA-En Banc)* in CTA EB Case No. 854 which, in turn, affirmed *in toto* the September 16, 2011 Decision[4] and the December 15, 2011 Resolution[5] of the First Division of the Court of Tax Appeals *(CTA Division)* in CTA Case No. 7850.

The undisputed facts may be restated in the following manner:

Petitioner Associated Swedish Steels, Inc. *(petitioner)* was a domestic corporation and a registered Value-Added Tax (VAT) entity engaged in the business of importing and selling tool steels and metallurgical products.[6] On November 15, 2007, petitioner's board of directors resolved to dissolve the corporation effective December 31, 2007.[7]

On July 1, 2008, seven months later, after it had ceased operations, petitioner filed its Application for Registration Information Update[8] with respondent Bureau of Internal Revenue *(BIR)*, seeking the cancellation of its registration as a VAT-registered entity. Through the same application, petitioner also sought the cancellation of its Taxpayer Identification Number *(TIN)* due to "Cessation of VAT Registration."

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[1] *Rollo*, pp. 3-55.
[2] Penned by Associate Justice Juanito C. Castaneda, Jr., with Presiding Justice Ernesto D. Acosta, and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Cassanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas, concurring; *rollo*, pp. 35-49.
[3] Id. at 51-54.
[4] Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Ernesto D. Acosta, and Associate Justice Esperanza R. Fabon-Victorino concurring; id. at 20-28.
[5] Id. at 29-33.
[6] See CTA *rollo*, p. 5, 22.
[7] Id. at 17.
[8] Id. at 18.

A few days thereafter, on July 7, 2008, petitioner filed an administrative claim with the BIR for the issuance of a tax credit certificate (TCC) in the amount of ₱23,303,769.83, representing its accumulated excess/unutilized input tax credits from its importation of goods and from domestic purchase of goods as of December 31, 2007.

Due to the inaction of the BIR, petitioner filed a petition for review[9] with the CTA Division.

On September 16, 2011, the CTA-Division found petitioner's application for the issuance of TCC *premature* and disposed of the petition in the following manner:

> WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED for lack of merit.
>
> SO ORDERED.[10]

Petitioner sought reconsideration but its motion was rebuffed.

On August 23, 2012, the CTA-*En Banc* affirmed the ruling of the CTA-Division, disposing:

> WHEREFORE, premises considered, the Petition for Review is DISMISSED for lack of merit. Accordingly, both the assailed Decision dated September 16, 2011 and [the] Resolution dated December 15, 2011 of the CTA First Division are hereby AFFIRMED.
>
> SO ORDERED.[11]

Petitioner moved for reconsideration, but to no avail.

Hence, this petition.

ISSUE

Whether or not the [CTA-*En Banc*] gravely abused its discretion when it denied [P]etitioner's claim for refund amounting to Pesos: Twenty Three Million Three Hundred Three Thousand Seven Hundred Sixty Nine and 83/100 (₱23, 303,769.83) solely on the ground that the administrative claim for issuance of a TCC was prematurely made, thus, failing to comply with the last requisite of Section 112 (B) of the Tax Code.[12]

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[9] Id. at 4-24.
[10] Id. at 28.
[11] Id. at 48.
[12] Id. at 9.

In seeking the issuance of the corrective writ of *certiorari*, petitioner claims that the CTA-*En Banc* committed grave abuse of discretion when respondent Commissioner of Internal Revenue *(respondent)* denied the administrative claim solely on the ground that the administrative claim was prematurely filed. According to petitioner, the denial of claim on a mere technicality should not be allowed, as it would not only unduly enrich the government at the expense of the petitioner, but also deprive it of its right to property without due process of law. [13]

As for the merits of its claim, petitioner asserts that the act of filing its Application for Registration Information Update for the cancellation of its VAT registration due to the cessation of its operations was the sole operative act that would trigger the cancellation of its tax registration.[14] Accordingly, petitioner is of the considered view that because it filed its Application for Registration Information Update on July 1, 2008,[15] its claim for refund or issuance of a TCC filed on July 7, 2008 was on time.

Petitioner argues that even if its administrative claim was prematurely filed, the defense of prematurity should have been deemed waived by respondent when it continued to process the claim notwithstanding its prematurity, and when it agreed to the Joint Stipulation of Facts and Issues[16] filed before the CTA-Division, where it was admitted that petitioner's administrative claim was filed "clearly within the two-year period..." [17]

For petitioner, both respondent and the tax courts should have acted liberally in applying the rules of procedure so as not to defeat petitioner's substantive right to claim a refund.[18]

The Court's Ruling

The petition must fail.

Petitioner availed of the wrong remedy

Immediately apparent is that the subject petition was the wrong remedy to question the issuances of the CTA-*En Banc*. Section 19 of

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[13] Id. at 9-10.
[14] Id. at 11.
[15] Id. at 10-12.
[16] CTA Division *rollo*, pp. 56-59.
[17] *Rollo*, p. 13.
[18] Id. at 15-17.

Republic Act *(R.A.)* No. 1125, as amended by Republic Act No. 9282,[19] and Section 1, Rule 16 of the Revised Rules of the Court of Tax Appeals[20] expressly provide that a party desiring to appeal from a judgment or final order or resolution of the CTA-*En Banc* should file **a verified petition for review on *certiorari* under Rule 45 of the Rules of Court**. Considering that, in this case, appeal by *certiorari* was available to petitioner, its right to resort to a special civil action for *certiorari* under Rule 65, a limited form of review and a remedy of last recourse, was foreclosed. Well-settled is the rule that *certiorari* lies only where there is no appeal or plain, speedy and adequate remedy in the ordinary course of law.[21]

A petition for review on *certiorari* under Rule 45 and a petition for *certiorari* under Rule 65 of the Rules of Court are mutually exclusive remedies. *Certiorari* cannot co-exist with an appeal or any other adequate remedy.[22] The nature of the questions of law intended to be raised on appeal is of no consequence.

While in certain cases this Court has considered petitions erroneously filed under Rule 65 as filed under Rule 45, the Court finds that it cannot be done in this case because the petition was filed beyond the 15-day reglementary period. Records show that petitioner filed its petition sixty (60) days after receipt of the January 21, 2013 Resolution of the CTA-En Banc[23] denying its motion for reconsideration. Verily, a Rule 65 petition cannot substitute for the lost appeal, even if the ground is grave abuse of discretion.[24]

The claim, that the subject recourse is justified on the ground that the dismissal of petitioner's right to recover excess input tax would result in the deprivation of property without due process of law, deserves scant consideration. After all, it has been said that the input tax is not a property or a property right within the constitutional purview of the due process clause.[25] Moreover, it cannot be said that the government is guilty of unjust enrichment should it not allow a recovery of the excess/unutilized input tax

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[19] Section. 19. *Review by Certiorari.* - A party adversely affected by a decision or ruling of the CTA-*En banc* may file with the Supreme Court a verified petition for review on *certiorari* pursuant to Rule 45 of the 1997 Rules of Civil Procedure."

[20] Section 1. *Appeal to Supreme Court by petition for review on certiorari.* – A party adversely affected by a decision or ruling of the Court en banc may appeal therefrom by filing with the Supreme Court a verified petition for review on certiorari within fifteen days from receipt of a copy of the decision or resolution, as provided in Rule 45 of the Rules of Court. If such party has filed a motion for reconsideration or for new trial, the period herein fixed shall run from the party's receipt of a copy of the resolution denying the motion for reconsideration or for new trial. (n)

[21] *Beluso v. Commission on Elections*, 635 Phil. 436, 442-443 (2010).

[22] *Macawiag v. Balindong*, 533 Phil. 735, 747 (2006).

[23] See *Nippon Paint Employees Union-Olalia v. Court of Appeals*, 485 Phil. 675, 681-682 (2004).

[24] *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, G.R. No. 155306, August 28, 2013, 704 SCRA 24.

[25] *Abakada Guro Party List, Inc. v. Hon. Exec. Sec. Ermita*, 506 Phil. 1 (2005).

credits. On this score, the following reasoning of the Court in *Commissioner of Internal Revenue v. San Roque Power Corporation*[26] *(San Roque)* can be said to be applicable by analogy:

> The input VAT is **not** "excessively" collected as understood under Section 229 because **at the time the input VAT is collected the amount paid is correct and proper**. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person - the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT - who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit **outside** of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT. (Emphases included. Underscoring supplied)

On these premises alone, the petition must be dismissed. For it is well to point out that with petitioner's erroneous filing of the subject petition, the challenged issuances of the CTA-*En Banc* had already attained finality and could no longer be reviewed by this Court. When a decision becomes final and executory, the court loses jurisdiction over the case and not even an appellate court has the power to review the said judgment. Otherwise, there will be no end to litigation and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[27] As held in the case of *Zamboanga Forest Managers Corp. v. Pacific Timber and Supply Co.*:[28]

> Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and **failure of a party to conform to the rules regarding appeal will render the judgment final and executory**. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court — not even the Supreme Court — has the power to revise, review, change or alter the same. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that,

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[26] G.R. Nos. 187485, 196113 and 197156, February 12, 2013, 690 SCRA 336, 392-393.
[27] *Macawiag v. Balindong*, 533 Phil. 735, 747 (2006).
[28] 647 Phil. 403, 415(2010).

> at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law. (Emphasis supplied)

The CTA-Division and the CTA-En Banc did not commit Grave Abuse of Discretion

At any rate, granting that a petition under Rule 65 was the proper remedy, the Court finds that the petition must still fail, as a review of the records of the case reveal that the tax tribunals below did not commit grave abuse of discretion amounting to lack or in excess of jurisdiction when they ruled to dismiss petitioner's administrative claim.

At the core of the subject petition is petitioner's insistence in its theory that the act of filing its Application for Registration Information Update for the cancellation of its VAT registration was the sole operative act that would trigger the cancellation of its tax registration.[29] Essentially, petitioner posits that since it filed its application for the cancellation of its VAT registration on July 1, 2008, there was nothing to stop it from filing its administrative claim for refund/issuance of a TCC on July 7, 2008, with respondent.

Petitioner's theory is misplaced.

As amended by R.A. No. 9337,[30] Article 236 of the National Internal Revenue Code *(NIRC)* reads:

x x x x

> (F) *Cancellation of Registration.* –
>
> "(1) ***General Rule.*** - The registration of any person who ceases to be liable to a tax type shall be cancelled **upon filing** with the Revenue District Office where he is registered, an application for registration information update in a form prescribed therefor;
>
> "(2) ***Cancellation of Value-Added Tax Registration.*** - A VAT-registered person may cancel his registration for VAT if:
>
> "(a) He makes written application and can demonstrate to the Commissioner's satisfaction that his gross sales or receipts for the following twelve (12) months, other than those that are exempt under Section 109 (A) TO (U), will not exceed One million five hundred thousand pesos (₱1,500,000); or

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[29] *Rollo*, p. 11.
[30] Otherwise known as the Revised Value-Added Tax Law (*R-VAT Law*).

"(b) He has ceased to carry on his trade or business, and does not expect to recommence any trade or business within the next twelve (12) months.

"**The cancellation of registration <u>will be effective from the first day of the following month.</u>** (Emphases and underscoring supplied)

From the above, it is readily apparent that the registration of any person who ceases to be liable to a tax type shall be cancelled upon filing of an application for registration information update with the tax authorities. As stated therein, this is only the general rule. Insofar as the registration of one subject to VAT is concerned, the law mandates that the cancellation of the registration of such person will be effective from the first day of the following month after the submission of a written application for cancellation of registration. By employing the word *"will,"* the law commands that the effectivity of the cancellation of a taxpayer's VAT registration would occur at definite date, that is, the first day of the following month from his application for cancellation. Neither the taxpayer nor the tax authorities enjoy the discretion when such cancellation shall take effect. Accordingly, when petitioner filed for the cancellation of its VAT registration on July 1, 2008, the cancellation thereof only took effect the first day of the following month.

Effect of filing an administrative claim prior to cancellation of VAT Registration:

1. Administrative Claim is Dismissible for being Premature

In its petition for review before the CTA-Division, petitioner cited Section 112(B) of the Tax Code as basis of its application for the issuance of a TCC in its favor. The cited provision states:

SEC. 112. *Refunds or Tax Credits of Input Tax.* –

XXXX

(B) *Cancellation of VAT Registration.* - **A person whose registration has been cancelled** due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years **<u>from the date of cancellation</u>**, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

From the above, it is clear that the taxpayer may, if he wishes, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes. The word "may" simply means that the taxpayer may or may not apply for the issuance of a TCC. It also means that the application may be filed "within two (2) years," which means at any time within two years.[31]

Whether due to retirement from or cessation of business or due to changes in or cessation of status under Section 106(C), the application for the issuance of a TCC under this provision is premised on the fact that a taxpayer's registration under the VAT system has been cancelled. Moreover, the two-year prescriptive period within which a taxpayer may apply for the issuance of a TCC is reckoned from the date of the cancellation of his registration. With these in mind, it goes without saying that the cancellation of a taxpayer's registration is both a mandatory and jurisdictional requirement before filing an administrative claim for the issuance of such tax credit certificate. On this, there can be no doubt.

Consequently, considering that petitioner's administrative claim was filed on July 7, 2008 **prior to the cancellation** of its VAT registration, the only conclusion is that the same was **premature**. Verily, with the law being clear, plain, and unequivocal, it should be applied exactly as worded, pursuant to the well-settled *verba legis* doctrine.

2. Petitioner's application for a TCC and Petition for Review are Void

To repeat, the prior cancellation of taxpayer's VAT registration is not only a mandatory requirement but a jurisdictional one as well. This is because, as explained above, an application for the issuance of a TCC is preconditioned on the prior cancellation of one's VAT registration. A taxpayer's application for refund/issuance of a TCC absent the prior cancellation of his VAT registration is one that cannot be recognized as filed under the law. Failure to comply with this jurisdictional requirement is as if petitioner never filed at all; it cannot be made a basis for a grant or a denial or an inaction "deemed a denial" which could have been the subject of the appellate tax court's jurisdiction.

For petitioner's failure to comply with the mandatory and jurisdictional requirement of prior cancellation of registration of its VAT registration, its application is null and void. The same can be said with respect to the subsequent petition for review filed with the appellate tax

[31] See *Commissioner of Internal Revenue v. San Roque*, supra note 26, at 390-391, regarding a similar ruling in interpreting Section 112 (A) of the Tax Code.

court. It is null and void, as there could not have been any decision or inaction on the part of respondent that could have been the subject of the tax court's appellate jurisdiction.

The alleged admission by the respondent that petitioner's application was valid because it was filed "clearly within the two-year period" has no significant bearing. The pertinent portion of the Joint Stipulation of Facts and Issues reads:

xxxx

> 6. Within two years from cancellation of Petitioner's VAT registration (which took effect on July 1, 2008), Petitioner may apply for the issuance of a Tax Credit Certificate (TCC) representing unused/excess input VAT credits.
>
> 7. Petitioner filed with BIR Regional District Office No. 43 ("BIR") an Application for Tax Credits/Refunds (BIR Form No. 1914) to claim a refund of excess or unutilized input VAT credits on July 7, 2008.
>
> 8. An administrative claim for issuance of a TCC was also filed on July 7, 2008, clearly within the two-year period provided therefrom.

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From the above, what respondent could have only admitted was the fact that petitioner filed its administrative claim on July 7, 2008. Respondent could not have stipulated as to whether petitioner's claim for refund/issuance of a TCC was filed within the prescriptive period as this was not a factual matter, but rather, a conclusion of law.

At any rate, as correctly noted by the CTA-*En Banc,* while respondent may have been barred from raising the issue of prematurity, the parties' stipulation as to petitioner's compliance with the mandate of the law cannot, in no uncertain terms, bind the courts.

In all, petitioner's failure to comply with the mandatory and jurisdictional requirement of prior cancellation of VAT registration rendered its application for issuance of a TCC a mere scrap of paper which cannot be the source of any right. As Article 5 of the Civil Code provides:

> Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

The Court cannot set a precedent that non-compliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit.[32] Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of tax refund or credit.[33]

As for petitioner's plea for the liberal application of the rules, suffice it to say that liberality in the application of the rules is afforded by the Court to only the deserving.

WHEREFORE, the petition is **DENIED**. *(**Brion, J.**, on leave; **Velasco, Jr., J.,** designated Acting Member, per Special Order No. 1951, dated March 18, 2015)*

SO ORDERED.

Very truly yours,

MA. LOURDES C. PERFECTO
Division Clerk of Court

[32] *Commissioner of Internal Revenue v. San Roque*, supra note 26, at 384.
[33] *Mindanao Geothermal Partnership v. Commissioner on Internal Revenue*, G.R. No. 193301 & 194637, March 11, 2013, 693 SCRA 49,76-78, citing *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

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