650 Phil. 429

SECOND DIVISION

[G.R. No. 173815, November 24, 2010]

MILWAUKEE INDUSTRIES CORPORATION, PETITIONER, VS. COURT OF TAX APPEALS AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This resolves the petition for *certiorari*[1] under Rule 65 of the 1997 Rules of Civil Procedure filed by petitioner Milwaukee Industries Corporation *(Milwaukee)* assailing the February 27, 2006 Verbal Order and the June 1, 2006 Resolution[2] of the Court of Tax Appeals *(CTA),* in CTA Case No. 6202 entitled "Milwaukee Industries Corporation v. Commissioner of Internal Revenue."

The Facts

In a Letter of Authority,[3] dated July 17, 1998, public respondent Commissioner of Internal Revenue (*CIR*) notified Milwaukee of its intent to examine their books of account and other accounting records for all internal revenue taxes for 1997 and other unverified prior years.

Milwaukee complied with the directive and submitted its documents to CIR.

Thereafter, CIR issued three undated assessment notices[4] together with a demand letter and explanation of the deficiency tax assessments. Milwaukee allegedly owed a total of P173,063,711.58 corresponding to the deficiencies on income tax, expanded withholding and value-added taxes for the 1997 taxable year. The table shows the supposed deficiency taxes due against Milwaukee:[5]

	Basic Tax	Interest	Compromise Penalty	Total
Deficiency Income Tax ST-Income-97-0093-	P43,114,980.66	P20,264,040.91	P25,000.00	P63,404,021.57

2000				
Deficiency expanded withholding tax ST-EWT-97-0092-2000	19,438.95	9,284.23	1,000.00	29,723.18
Deficiency value-added tax ST-VAT-97-0091-2000	72,108,530.81	37,496,436.02	25,000.00	109,629,966.83
TOTALS	P15,242,950.42	P57,796,761.16	P51,000.00	P173,063,711.58

In a letter[6] dated February 21, 2000, Milwaukee protested the assessments.

Due to CIR's inaction regarding its protest, on November 20, 2000, Milwaukee filed a petition for review before the CTA.[7] This was docketed as CTA Case No. 6202.

After Milwaukee had presented its evidence-in-chief, CIR offered the testimony of Ms. Edralin Silario *(Silario),* the group supervisor of the BIR examiners, who conducted the examination of Milwaukee's books. She testified on the Final Report she prepared for the BIR and explained the grounds for the disallowance of the deductions being claimed by Milwaukee on the following: (1) foreign exchange losses classified as miscellaneous expenses; and (2) interest and bank charges paid in 1997.

Subsequently, Milwaukee manifested its intention to present documentary rebuttal evidence.[8] By its Order of July 11, 2005, the CTA permitted Milwaukee to present rebuttal evidence starting September 5, 2005.[9] Milwaukee, however, moved for resetting on the scheduled hearings, particularly on September 5, 2005 and October 26, 2005.[10]

On January 16, 2006, Milwaukee was able to partially present its rebuttal evidence in a commissioner's hearing.[11] The CTA scheduled another hearing on February 27, 2006.

On February 27, 2006, during the scheduled hearing, the CIR waived its right to cross-examine Milwaukee's witness.[12] The CTA then asked Milwaukee to continue its presentation of rebuttal evidence. Not prepared, Milwaukee moved for the postponement of the pre-marking and presentation of its rebuttal evidence relative to the deductibility of some interests and bank charges from its corporate income tax for the year 1997 amounting to P18,128,498.26.

Immediately, the CTA issued a verbal order denying Milwaukee's motion to be allowed additional commissioner's hearing for further presentation of its rebuttal evidence. The CTA likewise gave Milwaukee ten (10) days within which to submit its Formal Offer of

Rebuttal Evidence.[13]

Consequently, Milwaukee moved for reconsideration of the CTA's verbal order. Milwaukee likewise moved to toll the running of the period for filing its formal offer of rebuttal evidence.[14]

In its June 1, 2006 Resolution, the CTA denied Milwaukee's motion for reconsideration but allowed its motion to suspend the period for filing of formal offer of rebuttal evidence.[15] Specifically, the CTA stated:

> This Court agrees with the respondent. The Court, upon motion, allowed petitioner to present rebuttal evidence. However, it was petitioner who asked for several postponements of trial and commissioner's hearing, which lead the Court to issue final warnings on October 26, 2005, January 16, 2006 and January 31, 2006.
>
> It is worth stressing that the objective of the procedural rules is to secure a just, speedy and inexpensive disposition of every action to the benefit of all litigants. The Court will not countenance further delay of the proceedings. Thus, the Court hereby RESOLVES to DENY Petitioner's Motion for Reconsideration for lack of merit.
>
> However, finding petitioner's Motion to Toll Running of the Period for Filing Formal Offer of Rebuttal Evidence to be in order, the Court hereby RESOLVES to GRANT the same.
>
> WHEREFORE, petitioner is ordered to submit its Formal Offer of Rebuttal Evidence within the remaining period prescribed by this Court upon receipt of this Resolution. Respondent is given a period of 10 days to file his Comment thereto. Thereafter, petitioner's Formal Offer of Rebuttal Evidence shall be deemed submitted for resolution.
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> SO ORDERED.[16]

On June 21, 2006, Milwaukee filed its Formal Offer of Rebuttal Evidence (*ex Abundanti ad Cautelam*) before the CTA.[17]

Aggrieved by the denial of its motion for reconsideration of the verbal order, Milwaukee filed this petition.

In its Memorandum,[18] Milwaukee submits the following

ISSUES

WHETHER OR NOT RESPONDENT CTA COMMITTED GRAVE ABUSE OF DISCRETION (AMOUNTING TO LACK OR EXCESS OF JURISDICTION) IN DENYING PETITIONER'S MOTION TO BE ALLOWED TO PRESENT REBUTTAL EVIDENCE, AND ITS SUBSEQUENT MOTION FOR RECONSIDERATION THEREON:

A. Whether or not petitioner unduly delayed the case;

B. Whether or not petitioner was denied due process by not being allowed to present its rebuttal evidence in relation to its disallowed interest and bank charges for the year 1997; and

C. Whether or not petitioner's proffered evidence, if allowed and admitted, would have sufficiently substantiated its claims for deductibility of the disallowed interest and bank charges.[19]

Milwaukee explained that it "sought postponement of the 27 February 2006 hearing, but only because the same was originally scheduled for respondent CIR's cross-examination of Milwaukee's witness. Unexpectedly, on that very same hearing date, counsel for respondent CIR suddenly manifested that he was waiving cross-examination. Understandably, Milwaukee was constrained to request for postponement of said hearing, not because it intended to delay the proceedings, but because the evidence it intended to present, while already available, was yet to be collated and sorted out for a more orderly presentation."[20]

Milwaukee claimed that the denial of its motions deprived it of its right to have the case be decided on the merits. It wrote: "Without said countervailing evidence, the adjudication of the issue of deductibility of certain interest and bank charges will [be] seriously impaired, because it will not be based on substantial evidence or on the entire facts."[21]

The Court finds no merit in the petition.

In order for a petition for *certiorari* to succeed, the following requisites must concur, namely: (*a*) that the writ is directed against a tribunal, a board, or any officer exercising judicial or quasi-judicial functions; (*b*) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (*c*) there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law.[22] *Without jurisdiction* denotes that the tribunal, board, or officer acted with absolute lack of authority. There is *excess of jurisdiction* when the public respondent exceeds its power or acts without any statutory authority. *Grave abuse of*

discretion connotes such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; otherwise stated, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[23]

"As a rule, the grant or denial of a motion for postponement is addressed to the sound discretion of the court which should always be predicated on the consideration that more than the mere convenience of the courts or of the parties, the ends of justice and fairness should be served thereby."[24] Furthermore, this discretion must be exercised intelligently.[25]

In this case, the Court is of the view that the CTA gave enough opportunity for Milwaukee to present its rebuttal evidence. Records reveal that when Milwaukee requested for resetting on September 5, 2005 and October 26, 2005, its motions were granted by the CTA. As a matter of fact, by January 16, 2006, Milwaukee was already able to partially present its rebuttal evidence. Thus, when the CTA called on Milwaukee to continue its presentation of rebuttal evidence on February 27, 2006, it should have been prepared to do so. It cannot be said that the CTA arbitrarily denied Milwaukee's supposed simple request of resetting because it had already given the latter several months to prepare and gather its rebuttal evidence.

Milwaukee tried to reason out that if only the CIR gave an advance notice that it would be waiving its right to cross-examine its witness, then it could have "rushed the collation and sorting of its rebuttal documentary exhibits."[26]

The Court, however, is not persuaded.

As stated earlier, Milwaukee was given more than ample time to collate and gather its evidence. It should have been prepared for the continuance of the trial. True, the incident on said date was for the cross-examination of Milwaukee's witness but it could be short; it could be lengthy. Milwaukee should have prepared for any eventuality. It is discretionary on the part of the court to allow a piece-meal presentation of evidence. If it decides not to allow it, it cannot be considered an abuse of discretion. "As defined, discretion is a faculty of a court or an official by which he may decide a question either way, and still be right."[27]

Accordingly, Milwaukee's right to due process was not transgressed. The Court has consistently reminded litigants that due process is simply an opportunity to be heard.[28] The requirement of due process is satisfactorily met as long as the parties are given the opportunity to present their side. In the case at bar, Milwaukee was precisely given the right and the opportunity to present its side. It was able to present its evidence-in-chief and had its opportunity to present rebuttal evidence.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and *Sereno,*[*] *JJ.*, concur.

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[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Raffle dated November 22, 2010.

[1] *Rollo*, pp. 14-52.

[2] Id. at 93-95. Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez, concurring.

[3] Id. at 96.

[4] Id. at 97-99.

[5] Id. at 17.

[6] Id. at 109-118.

[7] Id. at 118a-122.

[8] Id. at 130-131.

[9] Id. at 142.

[10] Id. at 460.

[11] Id.

[12] Id. at 461.

[13] Id. at 61.

[14] Id. at 143-146.

[15] Id. at 93-95.

[16] Id. at 94-95.

[17] Id. at 147-160.

[18] Id. at 450-527.

[19] Id. at 458.

[20] Id. at 459.

[21] Id. at 469.

[22] Section 1, Rule 65, 1997 *Rules of Civil Procedure*; *Delos Santos v. Court of Appeals,* G.R. No. 169498, December 11, 2008, 573 SCRA 690, 700; *Camacho v. Coresis, Jr*., 436 Phil. 449, 458 (2002).

[23] *Republic v. Sandiganbayan,* G.R. No. 129406, March 6, 2006, 484 SCRA 119, 127; *Sarigumba v. Sandiganbayan,* 491 Phil. 704, 719 (2005)*; Angara v. Fedman Development Corporation,* 483 Phil. 495, 505-506 (2004); *People v. Court of Appeals,* G..R. No. 144332, June 10, 2004, 431 SCRA 610, 616-617; *Duero v. Court of Appeals*, 424 Phil. 12, 20 (2002); *Litton Mills, Inc. v. Galleon Trader, Inc*., 246 Phil. 503, 509 (1988).

[24] *Jaime R. Sevilla v. Judge Edison F. Quintin*, 510 Phil. 487, 494 (2005).

[25] Id.

[26] *Rollo*, p. 462.

[27] *Go Uan, v. Galang*, 120 Phil. 1366, 1369 (1964).

[28] *Villaruel, Jr. v. Fernando*, 458 Phil. 642, 656 (2003).