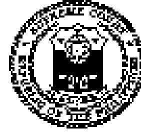

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **June 13, 2022**, *which reads as follows:*

"**G.R. No. 247700** (***Nestlé Philippines, Inc. v. The Court of Tax Appeals – Third Division and the Commissioner of Internal Revenue***).— This *Petition for Certiorari (with Urgent Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction*[1] impugns the *Resolution*[2] dated 22 April 2019 of the Court of Tax Appeals (CTA) Third Division, in CTA Case No. 9943.

Culled from the records are the following antecedent facts:

Petitioner Nestlé Philippines, Inc. (petitioner) is a domestic corporation engaged in the manufacture of food and beverages, including MILO®, a powdered chocolate malt flavored milk drink.[3] With the passage of Republic Act (RA) No. 10963, or the Tax Reform for Acceleration and Inclusion (TRAIN) Act, Section 150-B was added to RA No. 8424, or the National Internal Revenue Code, as amended (hereafter, Tax Code), which imposed for the first time an excise tax on certain "sweetened beverages" defined as "non-alcoholic beverages of any constitution (liquid, powder, or concentrates) that are pre-packaged and sealed in accordance with the Food and Drug Administration (FDA) standards, that contain caloric and/or non-caloric sweeteners added by the manufacturers."[4] Notably, the same provision enumerated certain exclusions including: "[a]ll milk products, including plain milk, infant formula milk, follow-on milk, growing up milk, powdered milk, ready-to-drink milk and flavored milk, fermented milk, soymilk, and flavored soymilk."[5]

The controversy spawned as a consequence of the imposition by respondent Commissioner of Internal Revenue (respondent) of the sweetened beverage excise tax (SBT) on petitioner's MILO® products. In order to avoid a disruption in its business, petitioner paid the SBT under protest, maintaining

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1 *Rollo* (Vol. 1), pp. 3-49.
2 Signed by Court of Tax Appeals Associate Justice Erlinda Piñera Uy and Ma. Belen M. Ringpis Liban; *Rollo* (Vol. 2), pp. 503-510.
3 *Rollo* (Vol. 1), p.54.
4 Section 150-B (B) (1), National Internal Revenue Code, as amended by Republic Act No. 10963.
5 Section 150-B (C) (1), National Internal Revenue Code, as amended by Republic Act No. 10963.

that MILO® products were excluded from the coverage of the provision considering that these were classified as "flavored milk" under Category 01.1.4 of the Codex Stan 192-1995, Rev. 2017. Nevertheless, it was constrained to pay SBT in the total amount of ₱253,926,718.50 covering the period from 2 April 2018 to 30 April 2018 so that it could remove its MILO® products from its manufacturing plants.[6]

On 9 August 2018, petitioner filed a written claim for refund for the erroneously paid SBT with respondent's Large Taxpayers Service. Petitioner requested respondent to: (1) confirm that MILO® products were milk products, hence, excluded from SBT; and (2) direct the Bureau of Internal Revenue (BIR) Field Operations Division to allow the withdrawal of the MILO® products from their place of production without prior payment of SBT. Petitioner likewise informed respondent that it would cease paying SBT effective 30 September 2018.[7]

In response, respondent stationed a revenue officer within petitioner's Lipa City Plant to ensure that no MILO® products would be removed without prior payment of SBT. It likewise advised petitioner to continue paying the tax.[8]

Petitioner considered such actions as a denial of its administrative claim.[9] Accordingly, on 8 October 2018, it filed a Petition for Review with Urgent Motion to Suspend Collection of Tax[10] before the CTA, praying for a refund of the SBT which it had paid under protest. In the concurrent Urgent Motion to Suspend Collection of Tax, petitioner also prayed for the issuance of an Order enjoining the collection of SBT on future removals of the MILO® products from its place of production.[11]

On 6 December 2018, petitioner filed a Motion for Leave to Post Provisional Surety Bond[12] while the Urgent Motion to Suspend Collection of Tax was still under consideration. In the said Motion, petitioner avowed that respondent had continuously collected SBT on its MILO® products of at least ₱550,000,000.00 per quarter from April to December 2018 notwithstanding the fact that the exaction had no legal basis. Thus, petitioner proposed that it be allowed to provisionally post a surety bond, in lieu of cash payment, equal to the tax payable for the withdrawal of the MILO® products beginning on 1 January 2019.[13]

In the Resolution[14] dated 17 January 2019, the CTA denied petitioner's Motion for Leave to Post Provisional Surety Bond, ratiocinating that its

[6] *Rollo* (Vol. 1), p.57.
[7] Id. at 58.
[8] Id. at 59.
[9] Id.
[10] Id. at 54-76.
[11] Id. at 60-70.
[12] *Rollo* (Vol. 2), pp. 511-514.
[13] Id. at 511-512.
[14] Id. at 517-519.

Petition for Review for the refund of ₱253,926,718.50 pertained only to the payment of SBT between 2 April 2018 and 30 April 2018. However, the proposed surety bond sought to cover future payments beginning January 2019, which was beyond the coverage of the Petition for Review. Under Paragraph 2, Section 11 of RA No. 1125, as amended, the surety bond may only cover the disputed amount claimed by the taxpayer in its petition before the CTA.[15]

Aggrieved, petitioner filed a Motion for Reconsideration.[16]

The CTA, in the assailed *Resolution*, denied both the Urgent Motion to Suspend Collection of Tax and the Motion for Reconsideration of the Motion for Leave to Post Provisional Surety Bond. Anent the first Motion, the CTA held that the remedy for the suspension for the collection of taxes only applied to taxes which were already being demanded by the government, and not to future impositions. It emphasized that there was nothing on record pertaining to assessment notices for SBT issued by the BIR against petitioner. Considering that there was no delinquent tax to be collected, petitioner could not avail of the suspension for the collection of tax under Rule 10 of A.M. No. 05-11-07-CTA, or the Revised Rules of the CTA (RRCTA).[17]

On the second Motion, the CTA explicated that the surety bond provided under the Rules pertained only to amounts that the BIR sought to collect through a demand for payment of delinquent taxes, or through the other collection processes under Section 205 of the Tax Code. Given that the surety bond prayed for covered future payments which were beyond the period stated in the Petition for Review, the CTA had no authority to suspend collection of the same.[18]

Finding the impugned *Resolution* unacceptable, petitioner commenced before this Court the instant *Petition for Certiorari (with Urgent Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction),* asserting that the CTA committed grave abuse of discretion when it evaded from its duty as a specialized court to resolve tax issues and contending, *inter alia*, that the CTA likewise committed judicial legislation in ruling that the remedy of suspension of collection of taxes applied only to delinquent taxes.[19]

Simply put, the pivotal issue for resolution is whether or not the CTA has the authority to suspend the collection of future taxes outside the scope of the petition for review before it.

After a perspicacious evaluation of the surrounding facts and

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[15] Id. at 518-519.
[16] Id. at 520-539.
[17] Id. at 506-508.
[18] Id. at 509-510.
[19] *Rollo* (Vol. 1), pp. 20-31.

circumstances obtaining in the case at bench, this Court finds and so rules that no grave abuse of discretion was committed by the CTA in issuing the challenged Resolution. Perforce, the Petition must fail.

Petitioner adamantly maintains that neither Section 11[20] of RA No. 1125, as amended, nor Section 2, Rule 10[21] of the RRCTA limits the remedy for the suspension of collection of taxes to delinquent taxes. It avouches that the phrase "tax liability" should be construed in its general sense and must necessarily include all kinds of tax liabilities, whether for unpaid deficiency taxes or for future excise taxes. So, too, petitioner argues that "compared to a tax assessment, the remedy of suspension of collection of tax to cover the future collection of SBT prior to removal of the MILO[®] products is even more justified because the jeopardy to [p]etitioner is much greater."[22]

Petitioner's avouchment fails to inspire assent.

The ruling of this Court in the recent case of *Commissioner of Internal Revenue v. Court of Tax Appeals (CIR v. CTA)*[23] is quite instructive as it presents very similar facts to the instant *Petition*. Assailed therein, *inter alia,* was the Resolution of the CTA denying the petitioner taxpayer's urgent motion to suspend collection of excise taxes and value-added taxes over its alkylate importations. The CTA held that "it ha[d] no jurisdiction to issue Suspension Orders on incoming alkylate importations because the same were not covered by the Amended Petition for Review." In resolving such issue, the Court affirmed the CTA's ruling, declaring that the CTA could not grant the provisional remedy of a suspension order barring the issuance of a tax assessment or an adverse decision, ruling, or inaction effectively mandating the payment of taxes against the taxpayer, *viz.*:[24]

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[20] SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
x x x x
No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court. x x x x

[21] SEC. 2. Who may file. – Where the collection of the amount of the taxpayer's liability, sought by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, or by whatever means, as provided under existing laws, may jeopardized the interest of the Government or the taxpayer, an interested party may file a motion for the suspension of the collection of the tax liability. (RCTA, Rule 12, sec. 1a)

[22] *Rollo* (Vol. 1), pp. 20-47.

[23] G.R. Nos. 210501, 211294 & 212490, 15 March 2021.

[24] Id.

> As may be gleaned from [Section 11 of RA 1125, as amended (CTA Law)], the **provisional remedy of a Suspension Order contemplates the existence of — and thus, has for its object — a "tax liability";** as such, for the said order to issue, it is required that a tax assessment or an adverse decision, ruling, or inaction effectively mandating the payment of taxes had already been issued against the taxpayer. Conversely, without any such tax assessment, decision, ruling or inaction, an order to suspend the collection of taxes under Section 11 of the CTA Law should not be issued since there is effectively no "tax liability" as of yet. In fact, the necessity of an existing "tax liability" in order to avail of a Section 11 Suspension Order is bolstered by the requirement of a surety bond which must be "double the amount." Without such "tax liability," there is no definite amount to which the required surety bond would be based on as equally required by Section 11.
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> x x x x x x
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> As above discussed, the wording of Section 11 of the CTA Law is clear in requiring the existence of a "tax liability" before a Suspension Order may be availed of. However, more than just proof of an issued assessment, the said assessment must be properly assailed and elevated to the CTA for it to acquire jurisdiction to issue any and all kinds of ancillary remedies in favor of the taxpayer, e.g., a Suspension Order. This is a necessary consequence of the CTA's jurisdiction as outlined in Section 7 of the CTA Law. The CTA only has **appellate jurisdiction** over the CIR or COC's **decision or inaction** on **disputed assessments**, or **original and appellate jurisdiction** in tax collection cases for **final and executory assessments.** In other words, the object of the CTA's appellate jurisdiction should be a final assessment coupled with a formal demand to pay the taxes by the government and ***not a mere preliminary assessment, or worse, an inchoate future assessment.*** With no such final assessment and formal demand, there is no proper object of an appeal and, hence, there is nothing to trigger the CTA's appellate jurisdiction. In this case, the tax liabilities anent the subsequent alkylate importations were not covered by disputed assessments nor a final and executory assessment, but at most, only preliminary assessments. Considering that a Suspension Order is a mere ancillary remedy to the CTA's appellate jurisdiction, the tax court could not have validly issued the said order over PSPC's subsequent alkylate importations which are either covered by preliminary assessments that were not properly elevated to the CTA or future assessments based on an anticipation of a similar demand by the tax authority in this case. (Emphases and underscoring supplied)

In sooth, the CTA committed no grave abuse of discretion when it exercised caution in denying petitioner's Urgent Motion to Suspend Collection of Tax and its Motion for Leave to Post Provisional Surety Bond. Contrary to petitioner's assertion, the same did not amount to judicial legislation but was rather the more prudent approach given the limits of the CTA's jurisdiction and the adverse impact it would have on the tax collection efforts of the government.

The Court commiserates with petitioner's plight; however, it cannot condone, much less assist, in the non-payment of taxes, which are being collected based on a presumably valid interpretation of the Tax Code by the primary agency tasked to enforce the same. Until such time that the same

interpretation is definitively declared invalid by the Court, or the pertinent regulation embodying such interpretation is temporarily enjoined through a writ of injunction,[25] obeisance thereto must be observed by all taxpayers.[26]

Concomitantly, petitioner's application for the issuance of a temporary restraining order and/or writ of preliminary injunction is rendered moot and academic.

WHEREFORE, the *Petition for Certiorari (with Urgent Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)* is hereby **DISMISSED**. The *Resolution* dated 22 April 2019 of the Court of Tax Appeals Third Division in CTA Case No. 9943 is **AFFIRMED.**

SO ORDERED."

By authority of the Court:

MisDCBatt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court JB 9/22/22

Atty. Daniel Angelo V. Mendoza
Counsel for Petitioner
ROMULO MABANTA BUENAVENTURA SAYOC & DE LOS ANGELES
21/F, Philamlife Tower
8767 P. de Roxas, 1226 Makati City

COURT OF TAX APPEALS
Agham Road, Diliman
1104 Quezon City
(CTA Case No. 9943)

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

Attys. Felix Paul R. Velasco III
Sylvia R. Alma Jose & Ayesha Hania Guiling-Matanog
Litigation Division
BUREAU OF INTERNAL REVENUE
Room 703, 7/F BIR Bldg.
1100 Quezon City

The Commissioner of Internal Revenue
BIR National Office Building
1101 Diliman, Quezon City

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25 See *Commissioner of Internal Revenue v. Court of Tax Appeals*, supra note 23.

26 See *Film Development Council of the Philippines v. Colon Heritage Realty Corp.*, G.R. Nos. 203754 & 204418 (Resolution), 15 October 2019.