STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
VERMA DEEPAK	:	ORDER & OPINION DTA NO. 823623
for Revision of a Determination or for Refund of Sales and Use Taxes Under Articles 28 and 29 of the Tax Law for the Period June 1, 1988 through August 31, 1991.	:	

Petitioner, Verma Deepak, filed an exception to the determination of the Administrative Law Judge issued on February 10, 2011. Petitioner appeared by S. Buxbaum & Co., Sales Tax Consulting, LLC (Stewart Buxbaum, CPA). The Division of Taxation appeared by Mark Volk, Esq. (David Gannon, Esq., of counsel).

Petitioner filed a brief in support of his exception. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition. Petitioner filed a letter brief in lieu of a formal reply brief. Petitioner's request for oral argument was withdrawn.

The Tax Appeals Tribunal issued a decision on December 22, 2011.

Petitioner filed a motion for reargument dated January 13, 2012, accompanied by a memorandum of law in support; petitioner appeared by Buxbaum Sales Tax Consulting, LLC (Michael Buxbaum, CPA). The Division of Taxation filed a letter brief in opposition dated January 31, 2012.

ORDER & OPINION

Section 3000.16 of the Tax Appeals Tribunal's (Tribunal) Rules of Practice and Procedure provides the standards governing a motion to reargue. The standard applied to motions to reargue, as stated in ***Matter of Schulkin*** (Tax Appeals Tribunal, November 20, 1997), is as follows:

> A motion to reargue is based on no new proof, seeking only to convince the court that it was wrong and ought to change its mind (Siegel, NY Prac § 254, at 383 [2d ed]). There is no statutory authority for this Tribunal to reconsider its decisions and, therefore, our authority to do so as a quasi-judicial body is limited (***Matter of Trieu***, Tax Appeals Tribunal, June 2, 1994, ***confirmed Matter of Trieu v. Tax Appeals Tribunal***, 222 AD2d 743, 634 NYS2d 878, ***appeal dismissed*** 87 NY2d 1054, 644 NYS2d 146, ***lv denied*** 88 NY2d 809, 647 NYS2d 714; ***Matter of Jenkins Covington, N.Y. v. Tax Appeals Tribunal***, 195 AD2d 625, 600 NYS2d 281, ***lv denied*** 82 NY2d 664, 610 NYS2d 151; ***see also***, ***Evans v. Monaghan***, 306 NY 312). However, although our authority to reconsider may be limited, it is not prohibited (***see***, 20 NYCRR 3000.16[c] [wherein motions for reargument and orders thereon are specifically authorized]). Instead, we believe any reconsideration must be undertaken with great care and vigilance, and only in cases where a valid basis for doing so has been raised by the movant.
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> In ***Foley v. Roche*** (68 AD2d 558, 418 NYS2d 588, 593, ***lv denied*** 56 NY2d 507, 453 NYS2d 1025), the Court stated:
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> > '[a] motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided.'

Furthermore, the Court stated in ***William P. Pahl Equip. Corp. v. Kassis***, (182 AD2d 22 [1992]) that a motion for reargument is not designed to afford the unsuccessful party an opportunity "to present arguments different from those originally asserted [citation omitted]"(***Id.*** at 27).

This Tribunal affirmed the Administrative Law Judge's determination, after reviewing the arguments presented on exception, the record of the proceeding before the Administrative Law Judge and the determination of the Administrative Law Judge. We decided that the Administrative Law Judge had accurately and adequately addressed the issues presented to him and correctly applied the relevant law to the facts of this case.

We addressed and rejected petitioner's arguments on exception that: a) a "true copy" of the Conciliation Order is not in the record (i.e., it was not signed); b) the standard mailing procedure was not met; and, c) neither petitioner, nor petitioner's then-representative, received the Conciliation Order at their last known addresses. Moreover, we found that the record sufficiently established that the relevant Conciliation Order had been mailed to petitioner and his then-representative. We also concluded that petitioner failed to timely file a petition with the Division of Tax Appeals in this matter and, thus, the Division of Tax Appeals lacked jurisdiction over the matter. In his motion for reargument, petitioner now advances that the record lacks adequate proof that the relevant Conciliation Order was the document that was actually mailed to the petitioner and his then-representative.

The motion before us merely articulates additional arguments that petitioner desires to advance and does not indicate appropriate circumstances that would justify reconsideration of our earlier decision.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the motion for reargument of Verma Deepak is denied.

DATED: Albany, New York
April 19, 2012

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner