

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PTT PHILIPPINES TRADING
CORPORATION,

Petitioner,

- versus -

COMMISSIONER OF CUSTOMS
and the COMMISSIONER OF
INTERNAL REVENUE,
Respondents.

C.T.A. CASE NO. 8002

Members:

ACOSTA, Chairperson
UY, and
FABON-VICTORINO

Promulgated:

JUL 13 2010 2:42 pm

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RESOLUTION

For resolution is the Motion to Dismiss dated February 22, 2010, filed by respondent Commissioner of Customs (COC) on the ground that the Court has no jurisdiction over the case and that petitioner is guilty of forum shopping justifying outright dismissal of the instant Petition for Review filed on December 1, 2009.

According to respondent, the assailed Demand Letter of November 7, 2007, requiring petitioner to pay the assessed duties, taxes and penalties has long become final and executory thus, no longer appealable. That being the case, the Court can

no longer act on the petition for want of jurisdiction. Petitioner admitted having received the assailed Demand Letter on November 12, 2007, hence, it had thirty (30) days or until December 12, 2009, within which to seek relief from the Court. However, the instant petition was filed only on December 1, 2009 or nearly two years from notice, in utter disregard of Section 9 Republic Act No. 9282, which grants any aggrieved party such as petitioner thirty (30) days from notice to file an appeal with the Court.

Moreover, petitioner is guilty of forum shopping by filing no less than four (4) petitions before this Court all assailing the same Demand Letter of November 7, 2007. The first Petition for Review was filed on November 20, 2007, docketed as CTA Case No. 7707, now pending before the Second Division. This was followed by an identical petition docketed as CTA Case No. 7981 filed on September 30, 2009. The instant case was the third in the series filed on December 1, 2009 and the last docketed as CTA Case No. 8023 was filed on January 13, 2010. All the elements of *litis pendentis*, namely, the parties, subject matter, issues and relief prayed for are the same. The petitioner's act of filing these cases sequentially constitutes abuse of the Court

process, degrades the administration of justice and congests the Court's docket.

Petitioner, on the other hand, states that respondent violated Section 5, Rule 6 of the Revised Rules of the Court of Tax Appeals when he filed a Motion to Dismiss and not an answer mandated in the cited provision. In his answer, respondent is required to state all the grounds justifying the dismissal of the petition. In view this procedural imperfection, respondent's Motion to Dismiss should be stricken off the record.

The instant Motion to Dismiss filed on February 22, 2010 is also a prohibited pleading having been filed after respondent filed his answer on February 12, 2010. Section 1, Rule 16 of the Rules of Court, which is supplementary to the Rules of the Court of Tax Appeals, requires a respondent or a defendant in a case to file a motion to dismiss and only after denial may he file an answer within the remaining period.

Further, the Demand Letter of November 07, 2007 is void, hence it did not become final and executory. It did not formally apprise petitioner of the law and the facts upon which the assessment is made in utter disregard of Section 228 of the Tax Code. It also violated petitioner's right to administrative due

process since it failed to consider petitioner's arguments in its July 24, 2007 letter/position paper and August 03, 2007 Request for Reconsideration. It adopted in full the recommendations and conclusions of the Joint Audit Team which conducted the investigation.

There can also be no forum shopping as claimed by respondent considering that not all the elements of *litis pendentia* are present in all the four (4) cases. While there may be similarity in the parties and the facts alleged in the petitions, the relief prayed for in each are different. The instant Petition seeks for the refund of P176,522,091.50 payment on November 29, 2007 while CTA Case No. 8023, for the refund of a similar amount paid on December 18, 2007. CTA Case No. 7707 and CTA Case No. 7981, on the other hand, were filed under different provisions of the Tax Code, although both pray for the refund of the same payment by petitioner in the amount of P117,681,394.00. CTA Case No. 7707 was filed under Section 228 assailing the denial of petitioner's protest while CTA Case No. 7981 was instituted under Section 229 of the Tax Code, due to respondent's inaction on petitioner's claim for refund of the same P117,681,394.00, erroneously and illegally collected from it.

In reply, respondent contends that under the Court of Tax Appeals rules of procedure, filing of a motion to dismiss is not proscribed. In the summons, respondent was only reminded to observe restraint in filing a motion to dismiss and instead allege the grounds thereof as defenses in the answer. Precisely, respondent filed his answer first before the instant Motion to Dismiss.

Respondents reiterates that the action has prescribed as petitioner filed its appeal only on December 1, 2009 or beyond the reglementary period of thirty (30) days, despite receipt of the assailed Demand Letter on November 12, 2007. Section 11 of Republic Act No. 9282 provides that the decision of respondent involving liability for customs duties as obtaining in the instant case is appealable to this Court within thirty (30) days from notice. The appeal period is mandatory and jurisdictional and not merely directory, hence beyond the power of the courts to extend¹.

Contrary to petitioner's claim, it was given the full details of the impugned assessment during the exit conference on July 12, 2007, where petitioner was also granted the opportunity to

¹ RCBC v. CIR, 522 SCRA 144 (2007)

explain its case and present countervailing evidence to disprove the findings and conclusions by the Joint Audit Team.

On petitioner's claim that the elements of *litis pendentia* are not present, respondent posits that the four (4) petitions filed with the Court all assail the Demand Letter dated November 7, 2007. The allegations in all the petitions are the same as well as the relief prayed for, to wit, the refund of the payments demanded in the assailed Demand Letter.

Moreover, Sections 228 and 229 of the Tax Code are applicable only to cases involving recovery of tax erroneously or illegally assessed and collected by the Commissioner of Internal Revenue and not of the Commissioner of Customs as in the instant case, where the relevant provisions of the Tariff and Customs Code of the Philippine (TCCP) apply.

There is no denying that respondent filed the instant Motion to Dismiss on February 22, 2010 or subsequent to his Answer filed on February 12, 2010.

Section 1, Rule 16 of the Revised Rules of Civil Procedure provides that a motion to dismiss shall be filed within the time for but before filing the answer to the complaint or pleading

asserting a claim² and where an answer has been filed, the defendant is estopped from filing a motion to dismiss.³

The rule is however not absolute. A motion to dismiss may still be filed even after the answer on the following grounds: (1) lack of jurisdiction, (2) *litis pendentia* (3) lack of cause of action, and (4) discovery during trial of evidence that constitutes a ground for dismissal.⁴

Irrefragably, one of issues raised in the motion to dismiss is jurisdiction. Respondent claims that the petition was filed out of time depriving the court of authority to hear and determine it. In a myriad of cases, the Supreme Court has ruled that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional.⁵ Therefore, jurisdiction which respondent invokes in his motion to dismiss falls under the exceptions to the general rule that a motion to dismiss should be filed within the time for but before filing an answer.

² Co vs. Court of Appeals, G.R. No. 147999. February 27, 2004

³ Phil-Ville Development vs. Javier, G.R. No. 147738, December 13, 2005

⁴ Panganiban vs. Pilipinas Shell, G.R. No. 131471. January 22, 2003

⁵ Sehwan, Incorporated vs. In-N-Out Burger, Inc., G.R. No. 171053, October 15, 2007

As to whether the instant Petition for Review was seasonably filed, Section 11 of Republic Act No. 9282⁶ is instructive, thus:

"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.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. x x x" (emphasis ours)

Corollarily Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals states, thus:

"SEC. 3. *Who may appeal; period to file petition.* - **A party adversely affected** by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or **by a decision or ruling of the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its

⁶ An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise Known as the law Creating the Court of Tax Appeals, and for Other Purposes

original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. x x x" (emphasis ours)

Evident from the foregoing provisions that a taxpayer aggrieved by an adverse decision or ruling of respondent must file a petition for review with this Court within 30 days from receipt⁷. Failure to do so will render the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess⁸. It will as well deprive the appellate court of jurisdiction to alter the judgment or final order, much less to entertain the appeal⁹. The failure of a taxpayer to perfect an appeal within the period fixed by law renders final the decision sought to be appealed. As a result, no court could exercise appellate jurisdiction to review the impugned decision¹⁰.

There is no pretension as to petitioner's receipt of the assailed Demand Letter on November 12, 2007. Thus, it had only until December 12, 2007, to seek relief from this Court. But

⁷ City of Manila vs. Coca-Cola Bottlers, G.R. No. 181845, August 04, 2009

⁸ RCBC vs. CIR, G.R. No. 168498, April 24, 2007

⁹ Sehwani, Incorporated vs. In-N-Out Burger, Inc., G.R. No. 171053, October 15, 2007

¹⁰ National Power Corporation vs. Sps. Laohoo, G.R. No. 151973, July 23, 2009

it took nearly two years for petitioner to elevate its case divesting this Court of the authority to act on the appeal. Petitioner's failure to perfect an appeal within the reglementary period is not a mere technicality as it raises a jurisdictional problem which deprives the appellate court of jurisdiction over the appeal ¹¹. Note that a demand letter for payment of delinquent taxes may be considered a decision on the disputed or protested assessment¹². Unequivocally, the assailed Demand Letter denied petitioner's protest over the assessment discussed in its letter/position paper of July 24, 2007 and Request for Reconsideration/Reinvestigation dated August 03, 2007.

Be that as it may, petitioner cannot be accused of forum shopping. It is evident that there is identity of parties and set of facts but the causes of action and relief sought vary. Therefore, any judgment rendered in these pending cases, will not amount to *res judicata*. The petition at bar filed on December 01, 2009 seeks to refund the payment of P176,522,091.50 made on November 29, 2007 under Official Receipt No. 144759386. The Petition for Review docketed as CTA Case No. 8023 filed on January 13, 2010, on the other hand, prays for the refund of P176,522,091.50 paid on December 18, 2007 under Official

¹¹ Bello vs. NLRC, G.R. No. 146212, September 5, 2007

¹² Oceanic Wireless Network vs. CIR, G. R. No. 148380, December 9, 2005

Receipt No. 0227227. Finally, CTA Cases Nos. 7707 and 7981 pray for the refund of P117,681,394.00 paid on October 02, 2007 under Official Receipt No. 0216072. In fine, petitioner seeks refund of different amounts paid on different dates as indicated in the official receipts that respondent attached to his own pleadings. Absent this element, no forum shopping can exist.

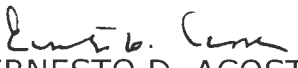
The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment¹³. Its elements are: (a) identity of parties, or at least such parties as represent the same interests in both action; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment rendered in the pending cases, regardless of which party is successful, amount to *res judicata* in the other case¹⁴.

¹³ Mega-Land Resources and Development Corporation v. C-E Construction Corporation, 528 SCRA 622

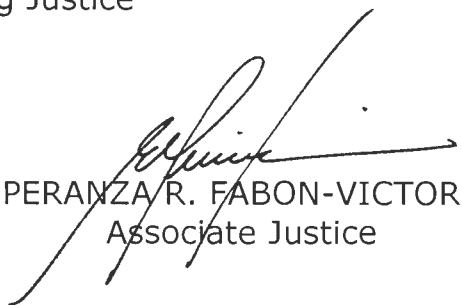
¹⁴ GD Express Worldwide vs. Court of Appeals, G.R. No. 136978, May 8, 2009

WHEREFORE, premises considered, the Motion to Dismiss dated February 22, 2010, filed by respondent Commissioner of Customs, is **GRANTED** for lack of jurisdiction. Consequently, the instant Petition For Review filed by PTT Philippines Trading Corporation is hereby **DISMISSED**.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice

(on leave)
ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice