

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

**L.T.J.S. STORE, represented by its
proprietor MR. ANTONIO DE
JESUS SILVA,**

CTA EB NO. 2604
(CTA Case No. 10583)

Petitioner, Present:

-versus-

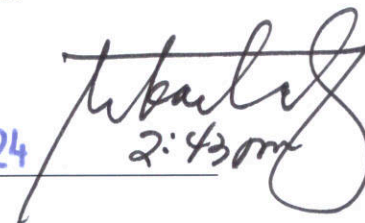
**HON. DISTRICT COLLECTOR OF
CUSTOMS, Port of Manila
International Container Terminal
(MICT) S Access Road, North
Harbor, Port Area, Tondo, Manila;
and HON. REY LEONARDO
GUERRERO, Commissioner of
Customs, G/F, OCOM Bldg., 16th St.,
South Harbor, Port Area, Manila,**

Respondents.

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.**

Promulgated:

JAN 12 2024



X ----- X

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a *Petition for Review*,¹ filed through registered mail on 12 April 2022 by petitioner L.T.J.S. Store, represented by its proprietor Mr. Antonio De Jesus Silva, seeking the reversal and setting aside of the Resolutions, dated 23 September 2021,² 7 December 2021,³ and 29 March 2022⁴ (collectively, “Assailed Resolutions”), rendered by the Court of Tax Appeals’ First Division (“Court in Division”). Petitioner prays that the

¹ *EB Records*, pp. 1-10.

² *Division Records*, pp. 29-35.

³ *Id.*, pp. 46-48.

⁴ *Id.*, pp. 55-63.

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case be allowed to proceed to its judicial determination, and for its claim of duty and tax in the amount of ₱1,113,962.28 be granted.

The Parties

Petitioner L.T.J.S. Store, represented by its proprietor Mr. Antonio De Jesus Silva, is a proprietorship store situated at Lot 30 Block 11 Phase 2, Sto. Niño Village, Tunasan, Muntinlupa where it may be served with summons and other court processes.⁵

Meanwhile, respondent Hon. District Collector of Customs holds office at Port of MICP, North Harbor, Port Area, Manila, while respondent Hon. Rey Leonardo Guerrero is the Commissioner of the Bureau of Customs (“COC”) with office at South Harbor, Port Area, Manila.⁶

The Facts

On 26 March 2021, petitioner allegedly filed a *Protest and Appeal for Duty and Tax Refund* (“Protest and Appeal”), which it also called *Protests and Demands*, with respondents.⁷ Respondents failed to act on this.

Aggrieved, petitioner filed a *Petition for Duty and Tax Refund*⁸ with the Court of Tax Appeals (“CTA”) on 9 July 2021, demanding refund of ₱1,113,962.28 representing the allegedly over-charged amount of duty collected from it.

On 23 September 2021, the Court in Division issued the Assailed Resolution dismissing the Petition for Duty and Tax Refund for lack of jurisdiction. The Assailed Resolution states that the jurisdiction of the CTA in Division is limited to review, by appeal, of decisions of the COC in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs. The Court in Division pointed out that the filing of the Petition for Duty and Tax Refund is premised on the alleged inaction of the COC which is not one of the subject matters upon which the CTA exercises jurisdiction. Assuming the Court in Division has acquired jurisdiction over the subject matter, the Petition should still be dismissed for lack of a proper verification. The dispositive portion of the Assailed Resolution reads:⁹

⁵ Petition for Duty and Tax Refund, p.1, Division Records, p. 6.

⁶ *Ibid.*

⁷ Petition for Duty and Tax Refunds, pp. 1-2, *id.*, pp. 6-7.

⁸ Division Records, pp. 6-26.

⁹ *Ibid.*

“WHEREFORE, in view of the foregoing, petitioner’s **Petition for Duty and Tax Refund** is hereby **DISMISSED** for lack of jurisdiction and for lack of proper Verification.

SO ORDERED.”

On 27 October 2021, petitioner filed through registered mail a *Motion for Leave to Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund*, with attached *Amended Petition for Review of Protest and Appeal for Duty and Tax Refund*,¹⁰ reiterating its claim for refund and attaching a Verification and Certification of Non-Forum Shopping. The Court in Division received the said motion on 8 November 2021.

On 18 November 2021, Records Verification of the CTA issued a report stating that no Motion for Reconsideration to the Resolution dated 23 September 2021 had been filed by petitioner.¹¹

On 7 December 2021, the Court in Division issued the Assailed Resolution denying petitioner’s *Motion for Leave to Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund* for failure of petitioner to file a timely motion for reconsideration. The Court in Division added that even assuming it were to consider the subject *Motion for Leave to Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund*, its denial is still warranted as the CTA had no jurisdiction over the case.

On 24 February 2022, petitioner filed a *Motion for Reconsideration of Denial of Petitioner’s Motion for Leave to Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund*,¹² which the Court in Division received on 9 March 2022.

On 29 March 2022, the Court in Division issued the Assailed Resolution denying petitioner’s *Motion for Reconsideration of Denial of Petitioner’s Motion for Leave to Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund*.

Thus, on 12 April 2022, petitioner filed through registered mail the instant Petition¹³ before the Court *En Banc*. 

¹⁰ Division Records, pp. 35-40.

¹¹ *Id.*, p. 43.

¹² *Id.*, pp. 49-53.

¹³ *EB* Records, pp. 1-10.

The Court *En Banc* issued then a Resolution,¹⁴ on 19 July 2022, directing petitioner to submit the following documents: (a) duplicate original or certified true copy of the Assailed Resolutions dated 29 March 2022, 7 December 2021, and 23 September 2021; and (b) compliant Affidavit of Service. Petitioner's counsel was likewise directed to show proof of compliance indicating: (a) counsel's date and number of membership due in the IBP per Official Receipt for CY 2022; and (b) counsel's PTR number together with date and place of issuance of CY 2022 as required by **Section 6, Rule 6 of the RRCTA**. The Court *En Banc* noted that petitioner's omissions make the instant Petition subject to dismissal under **Section 7, Rule 43 of the 1997 Rules of Civil Procedure, as amended**. However, to better serve the interest of justice without compromising compliance with procedural requirements, petitioner was allowed to rectify said omissions. In the same Resolution, without necessarily giving due course to the Petition, respondent was directed to comment on the Petition.

On 29 July 2022, petitioner filed its *Compliance [Re: Court order promulgated July 19, 2022]*.¹⁵

Meanwhile, the Records Verification dated 30 August 2022 show that respondents failed to file his Comment on the instant Petition.¹⁶

On 7 October 2022, the Court *En Banc* received a *Notice of Withdrawal of Counsel*.¹⁷ On even date, petitioner, through its proprietor Antonio De Jesus Silva, filed a *Manifestation* that its counsel on record tendered his withdrawal and petitioner prayed that he be given ample time to find another counsel who will take over the case.¹⁸ In a Minute Resolution¹⁹ dated 11 October 2022, the Court *En Banc* took note of the *Notice of Withdrawal of Counsel*. In a Resolution²⁰ dated 28 November 2022, the Court *En Banc* took note of petitioner's *Manifestation*.

In the meantime, on 17 October 2022, the Court *En Banc* issued a Resolution²¹ directing petitioner to submit, for the last time, a compliant *Affidavit of Service of the Petition for Review (Re: Resolution of the CTA Firsts Division- Case No. 10583)* posted by petitioner on 12 April 2022 showing the registry receipt numbers issued by the mailing office. On 4 November 2022, petitioner filed its *Compliance (Re: Directive per Court Resolution Promulgated Oct. 17, 2022)*.²² ✓

¹⁴ Resolution dated 19 July 2022, *id.*, pp. 12-15.

¹⁵ *Id.*, pp. 16-39.

¹⁶ *Id.*, p. 40.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*, pp. 61-63.

²¹ *Id.*, pp. 42-45.

²² *Id.*, pp. 46-60.

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In a Resolution²³ dated 12 January 2023, the Court *En Banc* took note of petitioner's *Compliance (Re: Directive per Court Resolution Promulgated Oct. 17, 2022)* and submitted the case for decision.

Pending the resolution of the instant case, the Court *En Banc* received, on 13 January 2023, a *Formal Entry of Appearance*²⁴ from petitioner's counsel and a *Manifestation*²⁵ from petitioner, of which the Court *En Banc* took note in a Minute Resolution²⁶ dated 16 January 2023.

However, on 9 March 2023, proprietor Antonio De Jesus Silva filed another *Manifestation*,²⁷ stating that petitioner's newest counsel of record had withdrawn her appearance. The *Manifestation* was then noted in a Minute Resolution,²⁸ dated 17 March 2023, which also gave petitioner forty five (45) days within which to update the Court on its new counsel.

Issue²⁹

The sole issue submitted for the Court *En Banc*'s resolution is:

Whether the Court in Division erred in dismissing the *Petition for Duty and Tax Refund* for lack of jurisdiction and lack of proper verification.

Arguments³⁰

Preliminarily, petitioner claims that it availed the correct remedy in filing the present *Petition* under ***Section (2)(a)(1), Rule 4 and Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*** which allows the Court *En Banc* to review, by appeal, the resolutions of the Court in Division.

In the present *Petition*, petitioner chiefly questions the Court in Division's dismissal of its *Petition for Duty and Tax Refund* claiming that the Court in Division failed to assert any law or specific ground for its dismissal. Petitioner insists that to serve the ends of justice, the Court may dispense with the strict compliance of procedural rule and exercise its discretionary power and authority in the disposition of the case. Petitioner further avers that the jurisdiction of the CTA is not limited to decisions of the COC. Citing ***Section*** ,

²³ *Id.*, pp. 64-66.

²⁴ *EB* Records

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Petition for Review*, p. 2, *id.*, p. 2.

³⁰ *EB* Records, pp. 1-10.

9 of R.A. No. 1125, as amended by R.A. No. 9282, petitioner maintains that the jurisdiction of the CTA also includes inaction of the COC involving his responsibilities under the Customs Law.

The Ruling of the Court *En Banc*

The Petition for Review must be dismissed.

The Court *En Banc* has no jurisdiction over the instant Petition for Review.

Under ***Sec. 2(a), Rule 4 of the RRCTA***, the Court *En Banc* has the appellate jurisdiction to review specific issuances of the Court in Division, namely Decisions or *Resolutions* on Motions for Reconsideration or New Trial:

“RULE 4 JURISDICTION OF THE COURT

...

SEC. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

- (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;**
- (2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and**
- (3) Tax collection cases decided by the Regional Trial Courts in the exercise of their original jurisdiction involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and penalties claimed is less than one million pesos;**

...” (Emphasis, Ours.)

A review of petitioner’s submissions before the Court in Division and said Court’s Resolutions on the same is in order:

- (1) On 9 July 2023, petitioner filed its *Petition for Duty and Tax Refund*.** ✓

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- (2) On 23 September 2021, the Court dismissed the *Petition for Duty and Tax Refund* through the first (1st) Assailed Resolution.
- (3) On 27 October 2021, petitioner filed, through registered mail, a *Motion for Leave to Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund* (“Motion to Admit”), which the Court in Division received on 8 November 2021.
- (4) On 18 November 2021, Records Verification of the CTA issued a report stating that no motion for reconsideration to the first (1st) Assailed Resolution had been filed by petitioner.
- (5) On 7 December 2021, the Court in Division issued the second (2nd) Assailed Resolution, denying petitioner’s *Motion to Admit* for failure to file a motion for reconsideration.
- (6) On 9 March 2022, the Court in Division received petitioner’s *Motion for Reconsideration of Denial of Petitioner’s Motion for Leave To Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund* (“MR”), which had been filed via registered mail on 24 February 2022
- (7) On 5 April 2022, petitioner received the Court in Division’s third (3rd) Assailed Resolution, dated 29 March 2022, denying petitioner’s MR.
- (8) On 12 April 2022, petitioner filed through registered mail the instant Petition before the Court *En Banc*.

On the surface, then, this Court seems to have jurisdiction over the instant Petition. Petitioner had filed its MR before the Court in Division, and this was denied in the third (3rd) Assailed Resolution. This Petition thus seeks the review of a resolution on a motion for reconsideration, rendered by the Court in Division in a case arising from the Bureau of Customs.

Recall, however, that the Court in Division had already dismissed the case in the first (1st) Assailed Resolution. No motion for reconsideration was ever filed to assail this, as petitioner’s MR sought the reversal of the second (2nd) Assailed Resolution. Indeed, in its MR, petitioner only prayed that the Court in Division reverse its denial of its *Motion to Admit*, but nowhere does it ask the Court to reconsider the earlier dismissal of the *Petition for Duty and Tax Refund*.

Did said dismissal become final executory? If so, then when? According to the receipt attached to the back of the Notice of Resolution,³¹ dated 29 September 2021, said Resolution was to be delivered to petitioner on 13 October 2021. The same receipt also states, however, that the “delivery date may change without prior notice” due to the pandemic happening at the time. ✓

³¹ Division Records, p. 27.

While this caveat may cast doubt on the given date, petitioner does not allege any other date for its receipt of the first (1st) Assailed Resolution. It, in fact, remains completely silent on said Resolution, despite the Court in Division mentioning said issuance in its subsequent Resolutions. Furthermore, the Court in Division previously used 13 October 2021 as the date of petitioner's receipt of the first (1st) Assailed Resolution in the second (2nd) Assailed Resolution.³² Petitioner did not controvert this either. As such, the Court *En Banc* is constrained to treat 13 October 2021 as the date of petitioner's receipt of the first (1st) Assailed Resolution.

Under *Sec. 1, Rule 15 of the RRCTA*, a litigant has fifteen (15) days from receipt of a resolution within which to file a motion for reconsideration assailed it. Petitioner thus had until 28 October 2021 within which to file a motion for reconsideration to the dismissal of its *Petition for Duty and Tax Refund*. It filed no such motion. As a result, the first (1st) Assailed Resolution, which dismissed the case, **had become final and executory on 28 October 2021.**

Recall, again, that petitioner filed its MR through registered mail on 24 February 2022, one hundred and thirty four (134) days after it received the Resolution dismissing its case and one hundred nineteen (119) days after said Resolution became final and executory. Said MR is thus improper, and petitioner should have been barred from filing it in the first place.

Without a proper motion for reconsideration, then, the third (3rd) Assailed Resolution, dated 29 March 2022, cannot be considered a "resolution" issued by the Court in Division on a "motion for reconsideration". There is thus no issuance from the Court in Division over which this Court *En Banc* can gain jurisdiction.

In any case, as has previously been shown, the dismissal of the *Petition for Duty and Tax Refund* had already become final and executory, and thus cannot be reviewed by this Court *En Banc*.

In brief, the Court *En Banc* has no jurisdiction over the instant case. And as proclaimed by the Supreme Court in *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*,³³ when a court has no jurisdiction over a subject matter, the only power it has is to dismiss the case.

There is accordingly no need to discuss petitioner's arguments regarding the Court in Division's supposed jurisdiction over respondents' alleged inaction. Even if this Court were to agree with petitioner, We would already be barred from reversing the Court in Division's Assailed Resolutions. 

³² Resolution, dated 7 December 2021, p. 2, *id.*, p. 47.

³³ G.R. No. 209830, 17 June 2015.

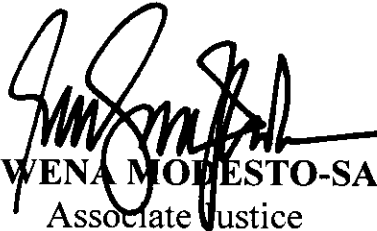
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WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by L.T.J.S. STORE, represented by its proprietor MR. ANTONIO DE JESUS SILVA is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.



MARIA ROWENA MOLESTO-SAN PEDRO
Associate Justice

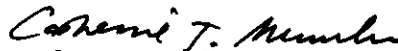
WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice

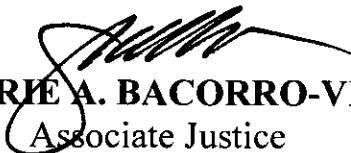


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

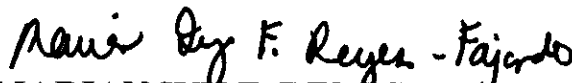


(With due respect, please see Separate Concurring Opinion.)

CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice

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CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**L.T.J.S. STORE represented CTA EB No. 2604
by its Proprietor MR. (CTA Case No. 10583)
ANTONIO DE JESUS SILVA,
Petitioner,**

Present:

-versus-

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.**

**HON. DISTRICT COLLECTOR
OF CUSTOMS, Port of Manila
International Container
Terminal (MICT), S Access
Road, North Harbor, Port
Area, Tondo, Manila; and
HON. REY LEONARDO B.
GUERRERO, Commissioner
of Customs, Ground Floor,
OCOM Bldg., 16th St., South
Harbor, Port Area, Manila,
Respondents.**

Promulgated:

JAN 12 2024

X ----- X

SEPARATE CONCURRING OPINION

MANAHAN, J.:

I agree with the conclusion reached in the *ponencia* by dismissing the instant Petition for Review. With due respect, however, I proffer a different ground for the dismissal based on a wrong mode of appeal.

Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended, pertinently provides: *can*

“SEC. 4. Where to appeal; mode of appeal. –

xxx

xxx

xxx

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.”

In relation to the above-quoted rule, Section 1, Rule 43 of the Revised Rules of Court (ROC) provides:

“*Section 1. Scope.* – This Rule shall apply to appeals from **judgments or final orders** of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasijudicial agency in the exercise of its quasi-judicial functions. xxx” (*Emphasis supplied*)

In *Ricardo P. Carniyan and among real parties in interest similarly situated bona fide residents v. Home Guaranty Corporation*,¹ The Supreme Court differentiated a final order from an interlocutory order, as follows:

“A ‘final’ judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. **Nothing more remains to be done by the Court except to await the parties’ next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment** once it becomes ‘final’ or, to use the

¹ G.R. No. 228516, August 14, 2019. 

Separate Concurring Opinion

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established and more distinctive term, 'final and executory.'

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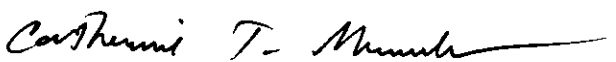
Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is 'interlocutory,' *e.g.*, an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. Unlike a 'final' judgment or order, which is appealable, as above pointed out, an 'interlocutory' order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case."²

Here, the Court in Division's resolution denying petitioner's motion for leave to amend its petition is a mere interlocutory order because it does not finally dispose of the case and it does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, as held in *Carniyan*.

Considering that the instant petition assails a mere interlocutory order, the Court *En Banc* may not act on the appeal pursuant to Section 4(b), Rule 8 of the RRCTA, in relation to Section 1, Rule 43 of the ROC.

Thus, the instant petition should be denied for lack of legal basis due to a wrong mode of appeal.

Considering the foregoing, I vote to **DENY** the Petition for Review.


CATHERINE T. MANAHAN
Associate Justice

² See Note 1, citing *Denso (Phils.), Inc. v. Intermediate Appellate Court*, 232 Phil. 256 (1987).