

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

RITCHE S. BARRIGA,
Petitioner,

CTA EB CRIM. CASE NO. 035
(CTA Crim. Case Nos. O-266,
O-267, O-268 & O-269)

Present:

-versus-

DEL ROSARIO, PJ.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

PEOPLE OF THE PHILIPPINES
AND COURT OF TAX APPEALS,
Respondents.

Promulgated:

JUL 28 2016 1:25 p.m.

X-----X

RESOLUTION

MINDARO-GRULLA, J.:

This resolves petitioner's "Motion for Reconsideration" of the Resolution dated April 27, 2016 of this Court en banc, the dispositive portion of which states:

"WHEREFORE, *premises considered, the petition is **DENIED DUE COURSE** and accordingly **DISMISSED.***

SO ORDERED."

Petitioner maintains its thrust previously argued in the petition. Petitioner insists that there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Third Division of this Court. However, a careful examination of petitioner's "Motion for Reconsideration" shows that no substantial argument was raised to merit

reconsideration of this Court en banc's Resolution promulgated on April 27, 2016.

This Court reiterates, in this case, that it will not shortcut the procedure to review through a special civil action, the prosecution's evidence and decide in advance whether such evidence has established the guilt of the accused beyond reasonable doubt.

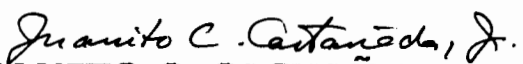
WHEREFORE, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

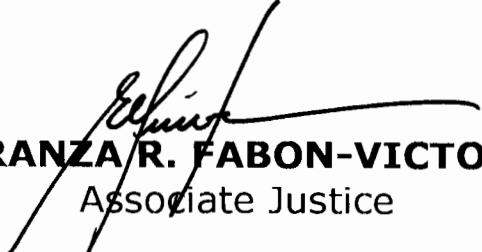

(with Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


(joins PJ del Rosario's Dissenting Opinion)
ERLINDA P. UY
Associate Justice


(joins PJ del Rosario's Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice



(with Dissenting Opinion)

AMELIA R. COTANGCO-MANALASTAS

Associate Justice



MA. BELEN M. RINGPIS-LIBAN

Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

RITCHE S. BARRIGA,
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PEOPLE OF THE PHILIPPINES
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APPEALS,

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Promulgated:

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DISSENTING OPINION

DEL ROSARIO, PJ:

With due respect, I maintain my Dissenting Opinion dated April 27, 2016 where I declined to give my assent to the outright dismissal of the Petition for *Certiorari* which assails the Court in Division's Resolution denying petitioner's demurrer to evidence considering that on its face, the Petition for *Certiorari* appears to be sufficient in form and substance, and that the Court *En Banc* has *certiorari* jurisdiction over interlocutory orders of the Court in Division following the pronouncement in *Bureau of Customs vs. The Honorable Agnes VST Devanadera*.¹

Taking into account (1) that the Court *En Banc* has jurisdiction over petitions for *certiorari* over interlocutory orders of the Court in Division; (2) that the respondent has already filed its *Comment (to the Petition for Certiorari with Prayer for the Issuance of a Temporary*

¹ G.R. No. 193253, September 8, 2015.

Restraining Order and a Writ of Preliminary Injunction);² and (3) that the Court *En Banc* has as yet to pass upon the merits of the petition, the Court *En Banc* ought to proceed to evaluate and weigh the allegations of the petition and render judgment pursuant to Sec. 8 of Rule 65 of the Rules of Court.³

All told, I vote to GRANT the Motion for Reconsideration of the Resolution of the Court *En Banc* dated 27 April 2016. Accordingly, the Court *En Banc* should proceed to make a determination on whether or not the Court in Division acted without or in excess of its jurisdiction or with grave abuse of discretion in issuing the assailed July 2, 2015 Resolution.


ROMAN G. DELROSARIO
Presiding Justice

² Rollo, p. 133-139.

³ Rule 65 – *Certiorari*, Prohibition and Mandamus

Section 8. Proceedings after comment is filed. — After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If after such hearing or submission of memoranda or the expiration of the period for the filing thereof the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for or to which the petitioner is entitled.

The court, however, may dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

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COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

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Promulgated:

JUL 28 2016 1:25 p.m.

X- - - - - X

DISSENTING OPINION

COTANGCO-MANALASTAS, J.:

With due respect, I dissent from the majority decision which ordered the outright dismissal the instant Petition for Certiorari (with Prayer for the Issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction). For the orderly administration of justice, I maintain my position to require the parties to submit memoranda, and thereafter, proceed to review the substantial merit of this petition, and render judgment accordingly pursuant to Sections 6 and 8, Rule 65 of the Rules of Court.

The general rule prevailing is that a petition for certiorari does not lie to review an order denying a demurrer to evidence, which is equivalent to a motion to dismiss, filed after the

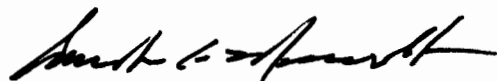
prosecution has presented its evidence and rested its case.¹ However, this rule is not absolute.

In *Tadeo vs. People* [360 Phil. 914, 919 (1998)], the Supreme Court declared that certiorari may be availed of when the denial of a demurrer to evidence is tainted with “grave abuse of discretion or excess of jurisdiction, or oppressive exercise of judicial authority.” And so it did declare in *Choa vs. Choa* [441 Phil. 175, 182-183 (2002)] where the denial is patently erroneous.²

Resort to certiorari is recognized and allowed under Rules 41 and 65 of the Rules of Court when a tribunal, board or officer has acted with grave abuse of discretion in the issuance of an interlocutory order.

Hence, I am of the humble opinion that outright dismissal of the instant Petition for Certiorari assailing the denial of a demurrer to evidence is unwarranted. There has to be a determination whether the assailed interlocutory order denying the demurrer to evidence was issued with grave abuse of discretion, and thus, qualify as an exception to the general rule that the extraordinary writ of certiorari is not available to challenge interlocutory orders. To succeed in said determination, however, sound procedural rule (i.e., Section 8 Rule 162 of the Rules of Court) dictates the Court to require the respondent to comment, and thereafter, to hear the case or require the parties to submit memoranda, and accordingly render judgment.

In view of the foregoing, I vote to grant the Motion for Reconsideration of the Resolution of the Court *En Banc* dated April 27, 2016; and, pursuant to Sections 6 and 8, Rule 65 of the Rules of Court, I reiterate my stance to require the parties to submit memoranda, and then proceed to determine the existence of grave abuse of discretion in the denial of the demurrer to evidence, and subsequently render judgment accordingly.

**AMELIA R. COTANGCO-MANALASTAS**

Associate Justice

¹ Consolidated Petitions for Certiorari entitled *Wilfred A. Nicolas vs. Sandiganbayan, et al.*, G.R. Nos. 175930-31 and *Jose Francisco Arriola vs. Sandiganbayan, et al.*, G.R. Nos. 176010-11 dated February 11, 2008.

² *Supra*.