

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

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PEOPLE OF THE PHILIPPINES,
Petitioner,

C.T.A. EB CRIM. NO. 003
(C.T.A. CRIM. NO. O-063)

Present:

-versus-

ACOSTA, Presiding Justice
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

LIZA R. MAGAWAY, ET AL.,
Respondents.

Promulgated:

APR 21 2008

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RESOLUTION

PALANCA-ENRIQUEZ, J.:

Petitioner People of the Philippines, represented by the Bureau of Customs, filed the present "Petition for Review" under *Section 11 of RA No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, which seeks the reversal and setting aside of the Resolution dated February 8, 2008, rendered by the First Division of this Court, in C.T.A. Crim. No. O-063, entitled "People of the Philippines vs. Liza R. Magaway, Paul C.T. Co, Esther P. Magleo, Edwin Agustin, and Victor Piamonte", denying petitioner's Motion for Reconsideration of the

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Resolution dated November 19, 2007, dismissing C.T.A. Crim. No. O-063 for lack of probable cause.

The settled rule is that the dismissal of a criminal case for lack of probable cause is not appealable, considering that the case can still be refiled, the dismissal being without prejudice as there is no double jeopardy. The dismissal of the case for lack of probable cause can only be questioned thru a Petition for Certiorari under *Rule 65*, where it is alleged that the respondent committed errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. In the case of *AAA vs. Carbonell*, 524 SCRA 505-506, which assailed the Order of the Regional Trial Court dismissing the rape case filed against private respondent for lack of probable cause, the Supreme Court in resolving the issue of whether the petition should be dismissed for being the wrong mode of appeal, held as follows:

“A petition for review on certiorari under Rule 45 is distinct from a petition for certiorari under Rule 65 in that the former brings up for review error of judgment while the latter concerns errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion is not an allowable ground under Rule 45. However, a petition for review on certiorari under Rule 65 may be amended where it is alleged that the respondents abused their discretion in their questioned actions, as in the



instant case. While petitioner claims to have brought the instant action under Rule 45, the grounds raised herein involve an alleged grave abuse of discretion on the part of respondent Judge Carbonell. Accordingly, the Court shall treat the same as a petition for certiorari under Rule 65.”

As stated in the petition, the present Petition For Review is an appeal taken by petitioner under *Section 11 of RA 9282* from the Resolution dated February 8, 2008 dismissing C.T.A. Crim. Case No. O-063 for lack of probable cause. *Paragraphs 1 to 7 of the Petition* allege:

“1. It is the humble opinion of herein petitioner-plaintiff that probable cause exist against herein respondents-accused for violation of Section 3601 of the Tariff and Customs code of the Philippines, as amended

2. The Department of Justice painstakingly discussed in its resolution why the defense of non-ownership and ‘error’ in the amendment of the Import Entry of the subject shipments, which was the primary defense of herein Respondents-Accused to belie the accusation against them, does not hold water.

3. With due respect to the First Division of this Honorable Court, while it reasoned in favor of respondents-accused, it did not debunked each and every basis raised by the Honorable Department of Justice in finding probable cause against herein respondents-accused, which include among others, the 24 day delay in the amendment, the Certification of Bienvenido Datingaling, Chief Cash Division, Port of Manila, the 3 bills of Lading involving the same vessel, same supplier and involving the same consignee-entity.



4. Granting that there was amendment duly approved by Atty. Bartolome, Special Assistant to the Commissioner dated 28 November 2006 (which is the anchor of the assailed decision), herein petitioner-plaintiff, in its Motion for Reconsideration, pointed out to the Honorable Court that there is a contrary Certification from the Chief of the Law Division of the Port of Manila, Bureau of Customs, attesting that indeed no amendment has been issued for the subject shipment.

Considering that there is actually a factual issue involved in the instant case, it is respectfully urged of this Honorable Court that it is more in keeping with justice that the involved question of fact be heard during a full blown trial to uncover the truth of the matter.

5. Likewise the defense of herein respondents-accused that the subject shipment was brought about by mistake indubitably deserve scant consideration from this Honorable Court, as it cannot in any manner be contemplated with common knowledge and experience of man bearing in mind the volume and value of the shipment.

6. To reiterate, if indeed herein respondent-accused have evidence to prove otherwise, it must be threshed out in a full blown trial in order to ultimately determine their liability.

7. Settled is the rule that in a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial. This was correctly found by the Honorable department of Justice.”



The averments of the petition clearly show that petitioner is raising errors of judgment, which is not an allowable ground by a petition for certiorari under *Rule 65*. A petition for review under *Section 11 of RA 9282* is distinct from a special civil action under *Rule 65* in that the former brings up for review errors of judgment, committed by a court with jurisdiction over the subject of the suit and the persons of the parties or any such error committed by the court in the exercise of its jurisdiction amounting to more than an error of judgment. On the other hand, the writ of certiorari issues for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction, and the only question that may be raised is whether or not the respondent has acted without or in excess of jurisdiction or with grave abuse of discretion; and the Court cannot correct errors of fact or law which the lower court may have committed. The special civil action of certiorari and appeal are two different remedies mutually exclusive; they are neither alternative nor successive (*People vs. Laguio, Jr., 518 SCRA 411*).

Considering that what is being appealed in the present Petition for Review is the Resolution of the First Division of this Court dismissing C.T.A. Crim. No. O-063 for lack of probable cause, the dismissal of the



instant case should have been questioned thru a Petition for Certiorari under *Rule 65 of the Rules of Court*, and not a Petition for Review under *Section 11 of RA 9282*. This is a settled rule in this jurisdiction.

Although a court may treat an appeal as a special civil action of certiorari under *Rule 65* when there is an allegation that respondent abused its discretion in its questioned actions, a careful perusal of the aforequoted allegations of the instant petition does not show any allegation of grave abuse of discretion on the part of the First Division of this Court in dismissing C.T.A. Crim No. O-063.

Accordingly, the Resolution dated February 8, 2008 dismissing C.T.A Crim. Case No. O-063, being not appealable, the instant petition is outrightly dismissible.

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

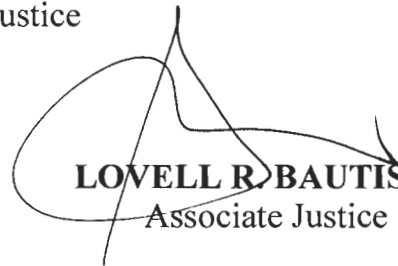
SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice

(On Official Business)
ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice