REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

REPUBLIC OF THE PHILIPPINES, represented by DEPARTMENT OF FINANCE (DOF), Petitioner,	CTA EB CASE NO. 981 (CTA CASE NO. 8201)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS *and* RINGPIS-LIBAN, *JJ.*
GRANDTEQ INDUSTRIAL STEEL PRODUCTS, INC. herein represented by its President, ABELARDO GONZALEZ, Respondent.	Promulgated: MAY 11 2015 4:19 p.m.

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RESOLUTION

Fabon-Victorino, J.:

Unconvinced with the ruling of the Court *En Banc*, petitioner seeks reconsideration[1] of the Decision promulgated on October 30, 2014[2], to which respondent filed its Comment through registered mail on March 4, 2015[3]. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, the Petition for Review filed by petitioner Republic of the Philippines,

[1] Petitioner's Motion for Reconsideration filed on December 2, 2014, docket, pp. 253-260.
[2] Docket, pp. 235-248.
[3] Docket, pp. 270-277.

> represented by Department of Finance is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision and Resolution dated September 27, 2012 and January 17, 2013, respectively, are **AFFIRMED** *in toto*.
>
> **SO ORDERED.**

In impugning the *En Banc*'s ruling, petitioner claims that the Court erred in considering the petition as a mere restatement, if not repetition of arguments submitted considering that the Supreme Court, in the case of *Siy vs. Court of Appeals, et. al*[4], has advised against rebuffing arguments for merely being raised anew.

Petitioner also complains that the Court ignored the long established rule that tax refunds are strictly construed against the taxpayer when it ruled in respondent's favor and held that there is no specific rule in any issuance mandating the payment of the processing fee for the refund application within one year. Petitioner admits that neither Section 3301 of the Tariff and Customs Code of the Philippines, nor Customs Administrative Orders 5-1995 and 2-2001 specifically and categorically state that non-payment of the processing fee will result in the denial of the claim, however, it argues that processing fees are supposed to be paid upon filing of the application for refund as it normally sets off the transaction. In this case, the refund processing fee was paid after the lapse of the period to claim for refund. Thus, it is erroneous for the Court to liberally apply the rules in favor of respondent.

Liberality, says petitioner, should only apply under justifiable causes and circumstances, not in case of wanton disregard of rules.[5] The BOC has technical expertise and mastery over specialized matters, hence, its findings deserve the respect of the courts. The Court cannot set aside rules prescribed by government agencies without encroaching upon the latter's jurisdiction. By ruling that

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[4] 138 SCRA 536 (1985).
[5] *Prieto vs. Alpadi Development Corporation*, G.R. No. 191025, 702 SCRA 736 [2013].

respondent substantially complied with requirement, the Court has encroached into the authority of the BOC. Petitioner admits that respondent has complied with all the requirements for applying for refund except that it belatedly paid the processing fee.

In rejecting the foregoing arguments, respondent counters that petitioner's quest for reconsideration lacks merit. All the issues raised by petitioner have been judiciously considered and passed upon by the Court in the assailed Decision. The action taken is evidently a desperate attempt to revive its unfounded and ludicrous arguments.

Further, the case of *Prieto vs. Alpadi Development Corporation*[6] cited by petitioner is not applicable to the instant case given that it is a criminal case wherein the Supreme Court ruled that the petition for review was filed out of time, thus, the period provided under Rule 45 of the Rules of Court was strictly applied. On the other hand, the lone issue in the instant case is respondent's belated payment of the refund processing fee. In justification, the Court rightly stated that to deny the taxpayer of its right to refund, after it already paid the processing fee would result in unjust enrichment on the part of the government which is not exempt from the application of *solutio indebiti*.

Respondent also claims that strict application and interpretation of laws and rules against taxpayers is not applicable to the tax refund. According to respondent, there is a parity between tax refund and tax exemption statute or a tax refund statute. In the instant case, respondent's claim for tax refund is premised on its unutilized advance deposit.

Petitioner's Motion for Reconsideration is bereft of merit.

It is evident that petitioner's arguments are mere rehash of its previous arguments, which have been determined and amply discussed, first by the Court in Division and subsequently on appeal, by the Court *En Banc*.

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[6] *Supra*, Note 5.

In fine, petitioner failed to raise any new or substantial matter or any compelling reason that will justify reversal or even modification of the Court's finding. While it is true that a repetition in the motion for reconsideration of the issues which have already been passed upon by the Court in the assailed decision is not a legal impediment for a reconsideration. But as held in the case of *Shangri-La International Hotel Management, Ltd., et. al vs. Developers Group of Companies, Inc.*,[7] "while petitioner DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action."

Moreover, all litigation must come to an end at some point, the Court *En Banc* should be shielded from the importunings of litigants who resort to the convenience of an appeal to the Court *En Banc* merely to hamper or delay the final resolution of the case.[8]

It is also unfortunate for petitioner to conclude that the Court set aside the tenet that tax refunds are strictly construed against the taxpayer.

The Court recognizes the well-settled rule in taxation that tax refunds or credit, just like tax exemptions, are strictly construed against taxpayers, however, reason dictates that such strict construction properly applies only when what is being construed is the substantive right to refund of taxpayers. When courts themselves have allowed for procedural liberality, then they should not be so strict regarding procedural lapses that do not really impair the proper administration of justice. After all, the higher objective of procedural rule is to insure that the substantive rights of the parties are protected.[9]

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[7] G.R. No. 159938, January 22, 2007.
[8] *Aboitiz Shipping Corporation vs. New India Assurance Company, Ltd.*, G.R. No. 156978, August 24, 2007.
[9] *Fabrigar vs. People*, 466 Phil. 1036, 1044 (2004) citing *Ligon vs. Court of Appeals*, 314 Phil. 689, 699 (1995).

As held by the Court in Division, while it is true that the refund processing fee was not paid within the prescibed one (1)-year period from the date the unutilized Letter of Credit was cancelled by the Authorized Agent Bank as prescribed in Customs Administrative Order No. 2-95, respondent has proven its entitlement to refund by complying with all the requirements provided by law and applicable rules and regulations. To quote:

> "The record shows that respondent was able to submit the documents enumerated in Section III (A) of CAO 5-92 which upon verification by the Deputy Collector for Assessment of the Port of Manila found to be complete and in order and that the amount subject of refund remained unutilized. Precisely, he issued the 1st Indorsement dated March 16, 2007 recommending that the request of respondent for refund be given due consideration. Subsequently, the BOC, through Disposition Form dated April 20, 2009, recommended the approval of the petitioner's claim for refund. In other words, respondent was able to meet the requirements under the pertinent provision of the TCCP which merited the favorable action by the BOC on its claim for refund."

With respect to respondent's compliance with the prescriptive period for filing claim for refund with the BOC, the record is clear that the L/C issued by Metrobank was cancelled on January 18, 2007, and the claim for refund was seasonably filed by petitioner on February 16, 2007.

Finally, the Court cannot subscribe to petitioner's contention that the Court cannot liberally apply or set aside the rules issued by the BOC, and by so doing, the Court, in effect, encroached upon BOC's jurisdiction.

In general, the rulings of administrative agencies are accorded respect by the Court, however, judicial review of actions of administrative agencies is essential, as a check on the unique powers vested unto these instrumentalities.[10] Review is available to reverse the findings of the specialized administrative agency if the record before the Court clearly precludes the agency's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence, or both.[11] Review may also be warranted to ensure that the NTC or similarly empowered agencies act within the confines of their legal mandate and conform to the demands of due process and equal protection.[12]

Still on rules of procedure, the Supreme Court, in *Balindong vs. Court of Appeals*[13] stated:

> x x x. Hence, **rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure.** Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain its failure to comply with the rules. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism or whimsicality in the settlement of disputes.

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[10] "Administrative agencies threaten this system of safeguards [of separation of powers within government] by combining powers in ways that threaten to short-circuit the checks relied upon by Madison. xxx Because agency decisionmaking is not highly visible and is not directly subject to the electoral check, there is a danger that the redistributive authority of agencies will be exercised in favor of a limited group of organized interests with a special stake in an agency's policies." S. Breyer & R. Stewart, Administrative Law and Regulatory Policy 105 (1979). Co-author Stephen Breyer, who currently sits in the United States Supreme Court, is recognized as one of the preeminent experts in Administrative Law in the United States.
[11] Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951).
[12] "Judicial review of the decision of an administrative official is of course subject to certain guideposts laid down in many decided cases. Thus, for instance, findings of fact in such decision should not be disturbed if supported by substantial evidence; but review is justified when there has been a denial of due process, or mistake of law, or fraud, collusion or arbitrary action in the administrative proceeding." Atlas Cement Corp, v. Hon. Gozon, et al., 127 Phil. 271, 279 (1967).
[13] 488 Phil. 203 (2004).

> **The enforcement of procedural rules is not antithetical to the substantive rights of the litigants. The policy of the courts is to give effect to both procedural and substantive laws, as complementing each other, in the just and speedy resolution of the dispute between the parties.** (Emphasis supplied)

Finally, the Court of Last Resort, in the case of *State Land Investment Corporation vs. Commissioner of Internal Revenue*[14], ruled, thus:

> Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law-abiding citizens. Under the principle of *solutio indebiti* provided in Art. 2154, Civil Code, the BIR received something "when there [was] no right to demand it," and thus, it has the obligation to return it. Heavily militating against respondent Commissioner is the ancient principle that no one, not even the state, shall enrich oneself at the expense of another. Indeed, simple justice requires the speedy refund of the wrongly held taxes.

WHEREFORE, the Motion for Reconsideration Re: Decision dated 30 October 2014 filed by petitioner Republic of the Philippines, represented by the Department of Finance on December 2, 2014, is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[14] G.R. No. 171956, January 18, 2008.

We Concur:

ROMAN G. DEL ROSARIO with concurring opinion
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Official Business)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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CONCURRING OPINION

***DEL ROSARIO, PJ.*:**

I concur in the denial of petitioner's Motion for Reconsideration (Re: Decision dated 30 October 2014) filed on December 2, 2014.

Citing Sections 3301 and 3303 of the Tariff and Customs Code of the Philippines (TCCP), petitioner insists that respondent's failure to pay the processing fee on its claim for refund of unutilized advance deposit in the amount of Php156,101.00 under Letter of Credit No. 066/LC/001523/06, within the one-year prescriptive period, should have been considered a ground for the denial of respondent's claim.

I find petitioner's position bereft of merit.

Sections 3301 and 3303 of the TCCP do not require payment of the processing fee within the one-year prescriptive period provided under Customs Administrative Order (CAO) No. 005-92. Truth to tell, under Section 3301 of the TCCP,[1] the fees and charges are imposed not on a claim for refund but, at most, on every formal protest filed before the Collector of Customs and on each appeal in protest and seizure cases. Also, Section 3303 of the TCCP[2] does not impose a docket fee, but merely provides the effect of failure to affix a documentary stamp upon a document, *i.e., the document shall not be received or recognized by any customs officials.* Moreover, a plain reading of CAO No. 005-92, which provides the guidelines and procedures for refund (tax credit) of unutilized advance deposits of customs duties with authorized agent banks, discloses that there is nothing therein which requires the payment of the processing fee and the period within which to file the same.

On the other hand, the payment of docket fees (*akin* to a processing fee) within the reglementary period is deemed a jurisdictional requirement **only when so explicitly stated in the law or rules. For instance, under Section 13, Rule 41 of the Rules of Court, the trial court may, *motu proprio* or on motion, dismiss the appeal for having been filed out of time or <u>for non-payment of docket and other lawful fees within the reglementary period</u>. The same rule, regarding the effect of failure to pay docket and other lawful fees, is specified in Section 5 of Rule 40 (in relation to Rule 41), Section 3 of Rule 42, and Section 7 of Rule 43, of the Rules of Court.**

Since there is nothing in Sections 3301 and 3303 of the TCCP and CAO No. 005-92 which expressly require the payment of the processing fee

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[1] SEC. 3301. Customs Fees and Charges. – For services rendered and documents issued by the Bureau of Customs, the following fees shall be charged and collected, by affixing documentary customs stamps in the correct amount upon the document or any other paper which is the subject of the charge and by the cancellation of such stamps in the manner prescribed by the Commissioner, and no such document or any other paper shall be issued or granted by any customs official until the correct amount of stamps shall have been affixed and cancelled: Provided, however, That fees of twenty pesos or over may be paid in case. xxx

For every formal protest filed before the Collector of Customs 50.00

For each appeal in protest and seizure cases 50.00

[2] SEC. 3303. *Effect of Failure to Affix Stamp upon Document.* - No document or any other paper upon which no documentary customs stamps have been affixed and cancelled shall be received or recognized by any customs official.

in a claim for refund, within the one-year prescriptive period to file the claim, I submit that petitioner is mistaken in insisting on the denial of respondent's claim for refund on the afore-mentioned ground.

All told, I VOTE to DENY the Motion for Reconsideration (Re: Decision dated 30 October 2014) filed by petitioner on December 2, 2014.

ROMAN G. DEL ROSARIO
Presiding Justice