REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AGFHA, INCORPORATED,
Petitioner,

C.T.A. EB No. 336
(C.T.A. Case No. 5290)

Present:

-versus-

Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, ***JJ.:***

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:

FEB 0 5 2008 GRApolinario
3:10 p.m.

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R E S O L U T I O N

Records show that on October 2, 2001, the Supreme Court issued a Decision in G.R. No. 139050 affirming the Court of Appeals Decision dated May 31, 1999 in CA-G.R. SP No. 42590 and this Court's Decision dated November 4, 1996 in CTA Case No. 5290, ordering the release of shipment of bales of textile products in favor of the petitioner.

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When the Decision dated October 2, 2001 became final and executory, this Court issued a Writ of Execution against the respondent. However, the Writ was returned unsatisfied.

Due to the supervening event of loss of petitioner's goods, the Second Division of this Court issued a Resolution dated May 17, 2005 in CTA Case No. 5290 finding the respondent liable for the amount of US$160,348.08 representing the value of the shipment with legal interests.

Dissatisfied, both the petitioner and the respondent filed Motions for Partial Reconsideration of the May 17, 2005 Resolution. In modifying the earlier Resolution, this Court issued another Resolution dated October 18, 2005 which also ordered petitioner to pay the proper duties and taxes due on the shipment at the time of importation. Otherwise stated, the respondent must pay the value of the shipment, and the petitioner the taxes and duties due.

On November 29, 2005, the respondent subsequently filed a Petition for Review, docketed as CTA EB Case 136, with the Court *En Banc;* while the petitioner filed a Motion for Partial Reconsideration of the October 18, 2005 Resolution, specifically questioning the imposition of taxes on the subject shipment.

Acting on petitioner's Motion for Partial Reconsideration, the Second Division of this Court issued a Resolution dated February 3, 2006 denying the said Motion in CTA Case No. 5290.

Unfazed, the petitioner filed consolidated Petitions for Certiorari docketed as G.R. 173813 and 172051 before the Supreme Court which issued a Decision dated July 27, 2007 dismissing the same due to the absence of any grave abuse of discretion committed by this Court in the issuance of the assailed Resolutions.

In the Resolution dated October 10, 2007, the Supreme Court denied with finality petitioner's Motion for Reconsideration questioning the July 27, 2007 Decision.

On December 20, 2007, the petitioner again sought redress with this Court *En Banc* by filing a Petition for Review docketed as CTA EB Case No. 336.

After a careful examination of the Petition, including the required attachments, the Court finds that the same was filed beyond the fifteen (15) day reglementary period.

A party aggrieved by the decision or resolution issued by this Court in Division, is given the option to file an appeal with the *En Banc*, under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals which provides:

RULE 8
PROCEDURE IN CIVIL CASES

SEC. 3. *Who may appeal; period to file petition.* –

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. xxx

Applying the said provision, the petitioner received the assailed Resolution dated February 3, 2006 on February 13, 2006. Counting from the latter date, the petitioner has fifteen (15) days from receipt of the Resolution denying its Motion for Partial Reconsideration, or until February 28, 2006 to appeal with this Court *En Banc*. However, petitioner failed to timely avail of such remedy. It belatedly appealed through a Petition for Review with this Court *En Banc* on December 20, 2007, or a period of one (1) year and nine (9) months from the expiration of the period within which to appeal to this Court *En Banc*.

The Petitions for Certiorari filed with the Supreme Court did not suspend the running of the period to appeal with this Court *En Banc* in accordance with the Administrative Matter No. 07-7-12-SC, amending Section 7 of Rule 65 of the 1997 Rules of Civil Procedure which reads:

Rule 65

xxx xxx xxx

SEC. 7. *Expediting proceedings; injunctive relief.* - The court in which the petition is filed may issue orders expediting the proceedings,

> and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case.

The petitioner lost its right to appeal with this Court *En Banc* after the lapse of February 28, 2006. Furthermore, in assailing the October 18, 2005 and February 3, 2006 Resolutions which finally settled the matter on the amount of liability for the loss of goods, and the corresponding payment of the taxes due on the importation, the petitioner pursued a wrong mode of appeal by filing Petitions for Certiorari, instead of a Petition for Review with this Court En Banc. A special civil action for Certiorari will not lie as a substitute for the lost remedy of appeal.[1] Apparently, the Status Quo Order issued on September 4, 2006 by the Supreme Court did not have the effect of tolling the period to appeal with this Court *En Banc* because at the time Status Quo Order became effective, the appeal period had lapsed. The period to appeal is jurisdictional, and failure to perfect an appeal within the prescribed period bars this Court from entertaining the appeal.[2]

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[1] *Gatchalian vs. Court of Appeals, G.R. No. 161645*, July 30, 2004, 435 SCRA 681 and *Paa vs. Court of Appeals*, G.R. No. 126560, December 4, 1997, 282 SCRA 448.

[2] *Magestrado vs. People*, G.R. 148072, July 10, 2007, 527 SCRA 125, *PNOC-Energy Development Corporation (PNOC-EDC) vs. Veneracion*, Jr., G.R. 129820, November 30, 2006, 509 SCRA 93 and See *Rizal Commercial Banking vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, 491 SCRA 221.

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WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED** for being filed way beyond the reglementary period.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice