REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

L.T.J.S. STORE represented by its Owner / Proprietor, MR. ANTONIO DE JESUS SILVA, *Petitioner,*	**CTA EB No. 2618 (CTA Case No. 10539)** Present:
-versus-	**DEL ROSARIO, *P.J.*; UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, and FERRER-FLORES, *JJ*.**
HON. DISTRICT COLLECTOR OF CUSTOMS, Port of Manila Int'l. Container Terminal (MICT) S Access Road, North Harbor, Port Area, Tondo, Manila; and HON. REY LEONARDO B. GUERRERO, Commissioner of Customs, G/F, OCOM Building, 16th Street, South Harbor, Port Area, Manila, *Respondents.*	Promulgated: NOV 04 2022 4:12 PM

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RESOLUTION

On November 12, 2021, the Second Division of this Court (Court in Division) issued a Resolution dismissing petitioner's *Petition for Duty and Tax Refund* for both procedural and jurisdictional grounds.

On January 6, 2022, petitioner filed its *Motion for Reconsideration (Re: Resolution of Dismissal Promulgated November 12, 2021).*

On April 20, 2022, the Court in Division issued a Resolution denying petitioner's motion for reconsideration.

On May 19, 2022, petitioner filed its *Petition for Review of Protest and Appeal for Duty and [T]ax Refund* praying that the Resolution dated April 20, 2022 of the Court in Division be reconsidered and set aside. Petitioner posits, among others:

> 1. The Petition in this case should not be out-and-out be denied merely on the strict adherence to formalities of rules and procedures that can certainly be laid open to appropriate rectification or correction, if only to prevent grave injustice to a hapless taxpayer.
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> 2. The hasty issuance of the assailed Resolution runs counter to the role of evidence constituting a prima facie grave abuse of discretion, adversely affecting the right of petitioner to an impartial disposition of its case.
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> 3. No matter how imposing the technical rules and procedures and even jurisdictional grounds and legalistic interpretations are, such rules, procedures, approaches, or strategies should not be allowed to be used in some way by the Government to keep money that is not belonging to it without there being some valid reason in the vital rules of law, justice, and equity for it to discriminatorily happen.
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> 4. When the stringent application of the rules will result in manifest injustice, the Court with the prudent and reasonable exercise of its discretion may not strictly resort to an outright dismissal of the petition. So as to serve the ends of justice, the Court may dispense with the strict compliance of the procedural requirements and exercise its sound discretion to consider such error and inadvertence as a mere formal defect that must not necessarily render its Petition fatally defective to warrant its dismissal and to admit correction as the Petitioner has moved to admit its Amended Petition to conform with the procedural requirements.
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> ...

On July 14, 2022, the Court *En Banc* issued a Resolution directing:

1. Petitioner to provide proof of receipt of the Resolution dated April 20, 2022 within five (5) days from notice;

2. Petitioner to submit the following documents within five (5) days from notice: (a) duplicate original or certified true copy of the assailed Resolutions promulgated on November 12,

2021 and April 20, 2022; and (b) compliant Affidavit of Service;

3. Counsel for petitioner, Atty. Manuel R. Castro to show proof of compliance within five (5) days from notice: (a) counsel's date and number of membership due in the IBP per Official Receipt for Calendar Year (CY) 2022; and (b) counsel's PTR number together with the date and place of issuance for CY 2022, as required by Section 6, Rule 6[1] of the Revised Rules of the Court of Tax Appeals; and

4. Respondents to comment on the Petition within ten (10) days from notice.

Records show that petitioner filed its *Compliance (Re: Court Order Promulgated July 14, 2022)* on July 25, 2022 to submit the *"proof of receipt of the assailed Resolution, duplicate original or certified true copy of the assailed Resolutions, Affidavit of Service, counsel's date and number of membership due in the IBP per Official Receipt for Calendar Year (CY) 2022 and PTR number together with the date and place of issuance for CY 2022."* Petitioner submitted the following:

1. Photocopy of an envelope of the Court of Tax Appeals addressed to petitioner bearing the notation *"RECEIVED 5-17-22;"*

2. Original copy of the Resolution of the Court in Division dated April 20, 2022 for CTA Case No. 10539;

3. Printout of the Resolution of the Court in Division dated November 12, 2021 for CTA Case No. 10539;

4. *Affidavit of Service by LBC* dated July 25, 2022 pertaining to petitioner's *Compliance (Re: Court Order Promulgated July 14, 2022).*

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1 SEC. 6. *Entry of appearance.* – An attorney may enter an appearance by signing the initial pleading. An attorney may later enter his appearance only by filing an entry of appearance with the written conformity of his client.
The initial pleading or entry of appearance must contain the following:
...
(3) The date and number of his current membership due in the Integrated Bar of the Philippines (IBP) per Official Receipt, or Lifetime Member Number;
(4) Current Professional Tax Receipt (PTR) number together with date and place of issuance; and
...

On August 1, 2022, respondent filed its *Comment (Re: Petition for Review of Protest and Appeal for Duty and Tax Refund dated May 12, 2022)*. Respondent claimed that the Petition is defective in form and non-compliant with the Revised Rules of the Court of Tax Appeals (RRCTA) and the Rules of Civil Procedure, as amended.

On August 12, 2022, petitioner filed his *Petitioner's Reply [to the] Comment [Re: Respondent Commissioner of Customs (COC) Comment Filed through the Office of the Solicitor General (OSG) dated August 1, 2022]*.

The Petition is dismissed.

The Court *En Banc* lacks jurisdiction over the Petition. Section 4 (b), Rule 8 of the RRCTA provides that an appeal from a decision or ruling of the Court in Division shall be taken to the Court *En Banc* by filing a petition for review as provided in Rule 43 of the Rules of Court.

Section 4 of Rule 43 of the Rules of Court provide that an appeal assailing the decision or ruling of the Court in Division shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*.

Records show that the Notice of Resolution dated April 20, 2022 was received by petitioner's counsel on **April 22, 2022** denying his motion for reconsideration and was served through registered mail to petitioner on April 27, 2022, in contrast to the May 17, 2022 date of receipt alleged by petitioner in his Petition. Thus, counting from April 22, 2022, petitioner had until **May 7, 2022** to file a Petition for Review with the Court *En Banc*.

The Court *En Banc* cannot give credence to the photocopy of an envelope of the Court of Tax Appeals addressed to petitioner bearing the notation *"RECEIVED 5-17-22"* as proof of receipt for being a mere photocopy and for not being identified by petitioner to be such proof as required in the Resolution of this Court dated July 14, 2022.

Considering the foregoing, the *Petition for Review of Protest and Appeal for Duty and [T]ax Refund* filed by petitioner on May 19, 2022 was filed out of time. The Court *En Banc* therefore has no jurisdiction to take cognizance of the said Petition.

Even if the Court were to take cognizance of the Petition, petitioner failed to comply with Section 6, Rule 43 of the Rules of Court which requires the petition for review to be accompanied by a clearly legible duplicate original or a certified true copy of the assailed Resolutions. This requirement was reiterated by the Court *En Banc*'s Resolution dated July 14, 2022, wherein petitioner was expressly directed to submit the duplicate original or certified true copy of the assailed Resolutions promulgated on November 12, 2021 and April 20, 2022. In the *Compliance (Re: Court Order Promulgated July 14, 2022)* filed by petitioner on July 25, 2022, petitioner submitted the duplicate original of the April 20, 2022 Resolution[2] only and submitted a print-out of the November 12, 2021 Resolution.[3]

In addition, petitioner failed to submit an Affidavit of Service of the *Petition for Review of Protest and Appeal for Duty and [T]ax Refund* filed by petitioner on May 19, 2022, thus petitioner failed to comply with Section 2, Rule 6[4] of the RRCTA, in relation to Section 6, Rule 43[5] of the Rules of Court and with the Court *En Banc*'s Resolution dated July 14, 2022.

Moreover, counsel for petitioner, Atty. Manuel R. Castro failed to indicate the date and number of counsel's membership due in the Integrated Bar of the Philippines (IBP) per Official Receipt for Calendar Year (CY) 2022 and counsel's Professional Tax Receipt (PTR) number together with the date and place of issuance for CY 2022, as required by Section 6, Rule 6[6] of the RRCTA. In the

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2 CTA EB No. 2618 Docket, pp. 21-32.

3 CTA EB No. 2618 Docket, pp. 34-51.

4 SEC. 2. *Petition for review; contents.* - The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court. **A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition.** (RTCA, Rule 5, sec. 2a) (Boldfacing supplied)

5 RULE 43: Appeals From the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals
Section 6. *Contents of the petition.* — The petition for review shall ... (c) **be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers;** ... (Boldfacing supplied)

6 SEC. 6. *Entry of appearance.* - An attorney may enter an appearance by signing the initial pleading. An attorney may later enter his appearance only by filing an entry of appearance with the written conformity of his client.
The initial pleading or entry of appearance must contain the following:
...

Compliance (Re: Court Order Promulgated July 14, 2022) filed by petitioner on July 25, 2022, in the signature portion of the Compliance, the IBP OR and PTR number of counsel for petitioner were dated January 21, 2021 and January 19, 2021, respectively. Thus, petitioner failed to comply with the Court *En Banc*'s Resolution dated July 14, 2022, wherein counsel for petitioner was directed to indicate the IBP OR and PTR number for CY 2022.

Accordingly, petitioner's failure to comply with the Rules of Court and the RRCTA, despite the opportunity for rectification or correction through the Court *En Banc's* Resolution dated July 14, 2022, warrants the dismissal of the present petition pursuant to Section 7, Rule 43 of the Rules of Court, to wit:

> SEC. 7. *Effect of failure to comply with requirements.* - The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, **proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.**[7]

It must be emphasized that an appeal is neither a natural nor a constitutional right but rather a statutory privilege. Hence, parties seeking to avail of such privilege must comply with the statutes or rules allowing it.[8] The perfection of an appeal in the manner and within the period set by law is not only mandatory but also jurisdictional.[9] The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[10]

When a court or tribunal has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[11]

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(3) The date and number of his current membership due in the Integrated Bar of the Philippines (IBP) per Official Receipt, or Lifetime Member Number;
(4) Current Professional Tax Receipt (PTR) number together with date and place of issuance; and
...

7 Boldfacing supplied.

8 *Air France Philippines v. Leachon,* G.R. No. 134113, October 12, 2005 as cited in *Goldmine Rice Marketing v. Hon. District Collector of Customs et al.,* CTA EB No. 2616 (CTA Case No. 10578), June 30, 2022.

9 *Id.*

10 *Commissioner of Internal Revenue v. Fort Bonifacio Development Corp.,* G.R. No. 167606 as cited in *Goldmine Rice Marketing v. Hon. District Collector of Customs et al.,* CTA EB No. 2616 (CTA Case No. 10578), June 30, 2022.

11 *Velasquez, Jr. v. Lisondra Land, Inc.,* G.R. No. 231290 citing *Mitsubishi Motors Philippines Corporation v. Bureau of Customs,* G.R. No. 209830, June 17, 2015 further citing *George Katon v. Manual Palanca Jr., et al.,* G.R. No. 151149, September 7, 2004 as cited in *Goldmine Rice*

WHEREFORE, the Court resolves to:

1. **DISMISS** Petitioner's *Petition for Review of Protest and Appeal for Duty and [T]ax Refund* filed on May 19, 2022 is due to procedural and jurisdictional grounds.

2. **NOTE** without action, Petitioner's *Compliance (Re: Court Order Promulgated July 14, 2022)* filed on July 25, 2022.

3. **NOTE** without action, Respondent's *Comment (Re: Petition for Review of Protest and Appeal for Duty and Tax Refund dated May 12, 2022)* filed on August 1, 2022.

4. **NOTE** without action, *Petitioner's Reply [to the] Comment [Re: Respondent Commissioner of Customs (COC) Comment Filed through the Office of the Solicitor General (OSG) dated August 1, 2022]* filed on August 12, 2022.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

Marketing v. Hon. District Collector of Customs et al., CTA EB No. 2616 (CTA Case No. 10578), June 30, 2022.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

ON OFFICIAL BUSINESS
CORAZON G. FERRER-FLORES
Associate Justice