REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF CUSTOMS
Petitioner,

-*versus*-

PHILIPPINES AIRLINES, INC. (PAL),
Respondent.

CTA EB CASE NO. 780
(CTA Case No. 8153)

Present:
Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
AUG 16 2012
11:15am

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a *"Petition for Review (Ad Cautelam)"* filed by the Commissioner of Customs by registered mail on May 30, 2011, seeking to annul and set aside the March 10, 2011 and the April 20, 2011 Resolutions of the Second Division of this Court ("Court in Division") denying his Omnibus Motion filed on January 18, 2012, and Motion for Reconsideration filed on March 24, 2011, respectively.

The Parties

Petitioner is the Commissioner of Customs ("COC"), a government agency tasked with the assessment and collection of customs duties and other lawful revenues from imported articles, including excise taxes imposed on wines, liquors, and cigarettes under Sections 142 and 145 of the 1997 National Internal Revenue Code ("NIRC"), as amended, on the basis of the delegated authority of the Commissioner of Internal Revenue ("CIR"), through an Authority to Release Imported Goods (BIR Form No. 1918) ("ATRIG") duly issued by the CIR addressed to the COC, in accordance with Section 12(a) of the 1997 NIRC, as amended. Petitioner has his office at G/F OCOM Bldg., Bureau of Customs, Port Area, Manila City. Petitioner is one of the respondents in CTA Case No. 8153, which is currently pending before the Second Division of this Court.

Respondent, Philippine Airlines, Inc. ("PAL") is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City. Respondent is the petitioner in CTA Case No. 8153,[1] which is currently pending before the Second Division of this Court.

Antecedent Facts

During the hearing held on November 25, 2010, the Court in Division granted the motion of PAL to declare the COC in default for failure to submit his Answer and Pre-Trial Brief., with confirming Resolution on even date.

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[1] *Records*, (CTA Case No. 8153), p 181.

On January 18, 2011, COC filed its "Omnibus Motion,"[2] "Comment,"[3] and "Pre-Trial Brief."[4] The COC, thru the OSG, prays that the attached "Comment," and "Pre-Trial Brief" be admitted, and the Resolution finding the COC in default accordingly, be reversed and set aside

On January 20, 2011, the Court in Division promulgated a Resolution ordering PAL to comment on the COC's "Omnibus Motion" within ten (10) days from notice thereof.[5] PAL filed its comment via registered mail on February 10, 2011. PAL opposed the COC's "Omnibus Motion" and asked for the denial of the same, citing the failure of the latter to both file an "Answer" and a "Pre-Trial Brief," and for failing to appear at the Pre-Trial Conference.[6]

On March 10, 2011, the Court in Division, finding no compelling ground to exempt the COC from compliance with Rule 18 of the Revised Rules of Court, denied the "Omnibus Motion."[7] The COC filed a "Motion for Reconsideration" on March 24, 2011, which was denied by the Court in Division, for being a second Motion for Reconsideration, which is clearly not allowed by Section 7, Rule 15 of the Revised Rules of the Court of Tax Appeals.

Consequently, petitioner COC filed a "Petition for Review (Ad Cautelam)" via registered mail on May 30, 2011, before the Court *En Banc*.

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[2] *Records*, (CTA Case No. 8153), pp. 198- 213.
[3] *Records*, (CTA Case No. 8153), pp. 214 - 227.
[4] *Records*, (CTA Case No. 8153), pp. 228 - 234.
[5] *Records*, (CTA Case No. 8153), p. 235.
[6] *Records*, (CTA Case No. 8153), p. 242 - 249.
[7] *Rollo*, (CTA EB Case No. 780), pp. 50 - 54.

The Issue Raised by Petitioner

Petitioner COC offers a sole ground as basis for the petition, *viz:*

"THE SECOND DIVISION OF THIS HONORABLE COURT ERRED IN DENYING THE OMNIBUS MOTION AND THE MOTION FOR RECONSIDERATION DESPITE THE COMPELLING REASON GIVEN AND PETITIONER'S MERITORIOUS CASE."[8]

The Ruling of the Court En Banc

Petitioner argues that there were compelling circumstances that warranted the exercise of judicial leniency and that petitioner had a meritorious case or defense.

The Court *En Banc* however disagrees, and finds the petition to be without merit.

To begin, a motion for reconsideration or new trial, falls under the exclusive appellate jurisdiction of the Court *En Banc* pursuant to Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, and Section 2(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals which reads:

> "*SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal.* - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
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> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997

[8] *Rollo*, (CTA EB Case No. 780), p. 33.

Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case en banc.

All other cases involving rulings, orders or decisions filed with the CTA as provided for in Section 7 shall be raffled to its Divisions. A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration of new trial before the same Division of the CTA within fifteens (15) days from notice thereof: Provide, however, That in criminal cases, the general rule applicable in regular Courts on matters of prosecution and appeal shall likewise apply.

No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

In criminal and collection cases covered respectively by Section 7(b) and (c) of this Act, the Government may directly file the said cases with the CTA covering amounts within its exclusive and original jurisdiction."

xxx xxx xxx

SEC. 2. Cases within the Jurisdiction of the Court en Banc. — The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
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> (1) Cases arising from administrative agencies — Bureau of Internal Revenue . . ."

On the matter of appeals, Section 3 of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended, states:

> "*SEC. 3. Who may appeal; period to file petition.* —
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> 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. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

While the above does allow a party adversely affected by a resolution of a Division of the Court on a motion for reconsideration to file a Petition for Review, the decision or resolution contemplated by this rule as appealable to the Court *En Banc*, is one that resolves a case with finality, effectually terminates or finally disposes of a case, as it leaves nothing to be done by the court, as the case has finally been decided on the merits.[9]

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[9] *Commissioner of Internal Revenue vs. Asia Trust Development Bank*, CTA E.B. Case No. 508, July 29, 2010.

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In the case of *Tan vs. Republic*,[10] an interlocutory order is defined as follows:

> "A final order is one that disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, while an <u>interlocutory order is one which does not dispose of the case completely but leaves something to be decided upon</u>." (Underlining ours.)

Furthermore, in *Santos v. People of the Philippines*,[11] the Supreme Court provided the test for distinguishing a final order from an interlocutory order, *viz*:

> "The test to determine whether an order or judgment is interlocutory or final is this: "Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final". A court order is final in character if it puts an end to the particular matter resolved or settles definitely the matter therein disposed of, such that no further questions can come before the court except the execution of the order. The term "final" judgment or order signifies a judgment or an order which disposes of the cause as to all the parties, reserving no further questions or directions for future determination. The order or judgment may validly refer to the entire controversy or to some definite and separate branch thereof. "In the absence of a statutory definition, a final judgment, order or decree has been held to be x x x one that finally disposes of, adjudicates, or determines the rights, or some right or rights of the parties, either on the entire controversy or on some definite and separate branch thereof, and which concludes them until it is reversed or set aside." The central point to consider is, therefore, the effects of the order on the rights of the parties. <u>A court order, on the other hand, is merely interlocutory in character if it is provisional and leaves substantial proceeding to be had in connection with its subject. The word "interlocutory" refers to "something intervening between the commencement and the end of a suit which decides</u>

[10] G.R. No. 170740, May 25, 2007, 523 SCRA 203.
[11] G.R. No. 173176, August 26, 2008, 563 SCRA 341, citing *De la Cruz v. Paras*, G.R. No. L-41053, February 27, 1976, 69 SCRA 556.

> <u>some point or matter but is not a final decision of the whole controversy</u>."

The records of CTA Case No. 8153 show that the case is still pending before the Second Division of this Court. Clearly, the proceedings have not been terminated as the Court still continues to hear the case after the issuance of the assailed Resolutions.

Accordingly, the Court *En* Banc finds the filing of this petition improper. Petitioner should wait for the Court in Division to dispose of the case in full via a final order or judgment. Only final orders or judgments on the merits may be the subject of appeal. This rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal.[12] To allow appeals from interlocutory orders would result in the "sorry spectacle" of a case being a subject of a counter-productive ping-pong to and from the trial court, as often as the trial court is perceived to have made an error in any of its interlocutory resolutions.[13]

Notwithstanding the above, the Court *En Banc*, the Court takes the opportunity to discuss the issue raised.

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[12] *United Overseas Bank (formerly Westmont Bank) vs. Hon. Judge Reynaldo Ros, presiding Judge of the Regional Trial Court of Manila, Branch 33, and Rosemoor Mining and Development Corporation*, G.R. No. 171532, August 7, 2007, 529 SCRA 334, citing *Rudecon Mananagement Corporation v. Singson*, G.R. No. 150798, 31 March 2005, 454 SCRA 612.
[13] *Ibid.* citing *Go v. Court of Appeals*, 358 Phil. 214, 223 (1998)

The rules regarding the period for filing an Answer, and failure to appear at the Pre-Trial Conference, as well as the consequences of failure to do the same are clear.

With regard to the timely filing of an Answer, Section 5, Rule 6 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, which reads as follows:

> "SEC 5. *Answer.* –
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> *(a) Time for filing and contents.* – Within fifteen days after service of summons, the respondent or the defendant shall file an answer to the petition or complaint which shall include all defenses in law and the specific provision of law and applicable jurisprudence and grounds for dismissal of the petition or complaint, or which shall prevent and bar recovery."

Further, Section 1 of Rule 11 of the Revised Rules of Court states:

> *"SECTION 1. Answer to the complaint.* – The defendant shall file his answer to the complaint within fifteen (15) days after service of summons, unless a different period is fixed by the court."

Furthermore, Section 3, Rule 9 of the Revised Rules of Court states:

> *"SEC. 3. Default; declaration of.* – If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.
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> (a) Effect of order of default. – A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.
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> (b) Relief from order of default. – A party declared in default may at any time after notice thereof and before judgment file a

motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

(c) Effect of partial default.—When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.

(d) Extent of relief to be awarded.—A judgment rendered against a party in default shall not exceed the amount or be different in kind from that prayed for nor award unliquidated damages.

(e) Where no defaults allowed.—If the defending party in an action for annulment or declaration of nullity of marriage or for legal separation fails to answer, the court shall order the prosecuting attorney to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated. (Underlining Ours.)

With respect to the timely filing of one's Pre-Trial Brief, and appearance at the Pre-Trial Conference, Sections 5 and 6 of Rule 18 of the Rules of Court

"*SEC. 5. Effect of failure to appear.* – The failure of the plaintiff to appear when *so required* pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the *plaintiff* to present his evidence ex parte and the *court* to render *judgment* on the basis thereof.

"*SEC. 6. Pre-trial brief.* – The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;

b) A summary of admitted facts and proposed stipulation of facts;

c) The issues to be tried or resolved;

d) The documents or exhibits to be presented, stating the purpose thereof;

e) A manifestation of their having availed or then intention to avail themselves of discovery procedures or referral to commis-sioners; and

f) The number and names of the witnesses, and the substance of their respective testimonies.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial. (Underlining Ours.)

The above rules are clear. When a party fails to file an "Answer," he may be declared in default upon motion of the opposing party. When a party fails to appear at a Pre-Trial Conference, the Court can dismiss the case outright or allow evidence to be presented *ex-parte*.

It is true that litigation is not a game of technicalities; it is equally true that every case must be prosecuted in accordance with the prescribed procedure.[14] Technical rules of procedure are designed not to frustrate the ends of justice, rather, they are intended to effect the proper and orderly disposition of cases,[15]

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[14] *Garbo v. Court of Appeals*, G.R. No. 107698, July 5, 1996, 258 SCRA 159.

[15] *Ismael V. Santos, Alfredo G. Arce and Hilario M. Pastrana vs. Court of Appeals, Pepsi Cola Products Phils., Inc., Luis Lorenzo, Jr. and Frederick Dael*, G.R. No. 141947, July 5, 2001, 360 SCRA 512.

and thus strict compliance with procedural rules is required to facilitate the orderly administration of justice.[16]

With respect to exception to the adherence to procedural rules, the Supreme Court in the case of *Asian Spirit Airlines vs. Spouses Bautista*,[17] states:

> "In not a few instances, the Court relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, thus, not serve as basis of decisions. In that way, the ends of justice would be better served. For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice. In this case, however, such liberality in the application of rules of procedure may not be invoked if it will result in the wanton disregard of the rules or cause needless delay in the administration of justice. **It is equally settled that, save for the most persuasive of reasons, strict compliance is enjoined to facilitate the orderly administration of justice.**" (Underlining Ours.)

While the Court appreciates the explanation offered by the petitioner, the same cannot justify the multiple failures on its part. The Court *En Banc* agrees with the Court in Division that there is no compelling ground to exempt the COC from the effects of his failure to comply with the Rules of Court.[18]

Furthermore, the Court *En Banc* agrees, that as pointed out by the Court in Division, if the COC's counsel was indeed burdened with heavy workload, he could

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[16] *PET Plans, Inc. vs. Court of Appeals*, G.R. No. 148287, November 23, 2004, 443 SCRA 510.
[17] G.R. No. 164668, February 14, 2005, citing *El Reyno Homes, Inc. v. Ong*, G.R. No. 142440. February 17, 2003, 397 SCRA 563.
[18] *Rollo*, (CTA EB Case No. 780), p. 53.

have easily filed a Motion for Extension of Time to file the required pleadings,[19] or instructed another lawyer at the office to do the same. This is not an unreasonable or new expectation of the counsel's office.

In the case of *Maria C. Roldan vs. Republic of the Philippines (Bureau of Public Schools), and the Workmen's Compensation Commission and/or the Secretary of Labor, Department of Labor,*[20] the Supreme Court stated:

> "The volume and pressure of work of the Solicitor in-charge of the case does not constitute such fraud, accident, mistake or excusable negligence as to warrant the relief from judgment contemplated under the Rules of the Commission. There are many other members or associates in the Office of the Solicitor General to whom the case may be reassigned to file the motion for reconsideration or appeal. While it cannot be denied that the said Office is swamped with work, some system can always be devised to give priority to cases like this. <u>Indeed, there is no cogent reason why in such a big law office with so many lawyers at its back [sic] and call, even a simple petition for relief from judgment could not have been prepared within a three (3) month-period from the time the judgment was *rendered or within thirty (30)* days from the time it learned of the judgment."</u> (Underlining Ours.)

As seen above, a large volume of work and a loaded calendar is not considered a valid excuse for failure to comply with the reglementary periods established by the Revised Rules of Court. The Supreme Court has even gone so far as to state that errors committed on the part of the Office of the Solicitor General as agent, are still binding upon the government.[21]

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[19] *Ibid.*
[20] G.R.No. L-45618, February 15, 1990, 182 SCRA 230.
[21] *Leca Realty Corporation vs. Republic of the Philippines*, G.R. No. 155605, September 27, 2006, 503 SCRA 56, citing *Republic vs. "G" Holdings, Inc.*, GR No. 141241, November 22, 2005, 475 SCRA 608.

Finally, with regard to the denial of petitioner COC's "Motion for Reconsideration" filed on March 24, 2011. The Court *En Banc* agrees with the Court in Division, in finding that this motion is a second motion for reconsideration.

Again, the rule on this matter is clear. Section 2 of Rule 52 of the Revised Rules of Court states:

> "*SEC. 2. Second motion for reconsideration.*—No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained."

Section 7 of Rule 15 of the Revised Rules of Court of the Court of Tax Appeals, reiterates the above rule:

> "*SEC. 7. No second motion for reconsideration or for new trial.* No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order."

Since the COC's "Omnibus Motion" asking that the Court in Division to set aside the November 25, 2010 Resolution declaring the COC in default, was the first time the petitioner asked the Court in Division to reconsider its Resolution, the "Motion for Reconsideration" filed by petitioner COC on March 24, 2011, praying for essentially the same thing, is the second.

Given the above, the Court *En Banc* has no recourse but to dismiss this case.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit; and accordingly **DISMISSED** for being premature.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice