REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TABACALERA INCORPORADA,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

CTA CASE NO. 10488

Members:

CASTAÑEDA, JR., *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

APR 07 2022
1:10 p.m.

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RESOLUTION

For resolution of the Court are:

1. petitioner's **Motion to Withdraw Petition for Review**, filed on November 18, 2021, with respondent's **Comment [On petitioner's Motion (to Withdraw Petition for Review) dated 16 November 2021]**, filed though registered mail on February 23, 2022 and received by the Court on March 9, 2022;

2. petitioner's **Manifestation**, filed on December 9, 2021; and

3. respondent's request for dismissal incorporated in his **Answer/Comment**, filed by registered mail on July 9, 2021 and received by the Court on July 22, 2021.

During the hearing held on October 25, 2021, the Court directed the parties to file their respective memoranda on respondent's motion to dismiss incorporated in his Answer, or a motion to withdraw at the option of the petitioner. Further, the Court instructed petitioner to immediately submit the Verification and Certificate of Non-Forum Shopping which petitioner failed to attach to its Petition for Review.

As such, on October 28, 2021, petitioner filed his *Memorandum*, while the *Memorandum* for the respondent was filed on November 17, 2021.

However, on November 18, 2021, petitioner likewise filed the instant motion seeking the approval of the Court on the withdrawal of its Petition for Review.

Petitioner explains that it filed a Petition for Review before this Court to assail respondent's Order dated March 2, 2021 declaring its shipment, which consists of 13 bales of Tobacco leaves, forfeited in favor of the government; that due to the perishable nature of the said shipment, it filed a Motion for Auction Sale which was held in abeyance in the Resolution dated September 30, 2021; that, in order to dispose of the subject shipment without delay, it has decided to pursue its remedy with the respondent Bureau of Customs and formally withdraw the Petition for Review so as not to commit forum shopping.

Meanwhile, petitioner filed a Manifestation attaching therein a copy of the verification and certification of non-forum shopping together with the Secretary's Certificate on December 19, 2021.

On the other hand, in his Comment filed on February 24, 2022, respondent contends that the withdrawal of the petition is no longer a matter of right on the part of petitioner but is discretionary upon the Court in accordance with Section 3, Rule 1 of the Revised Rules of the Court (RROC).

Further, respondent argues that, due to the non-compliance with the basic procedural requirements of attaching the material portions of the record as well as the verification and certification against forum shopping, petitioner's appeal was not perfected so that the assailed Order has now become final and executory.

Lastly, respondent submits that petitioner's withdrawal of the petition is deemed an acceptance of the assailed Order insofar as the denial for both the settlement offer and the release of the subject shipment. Thus, respondent prays for the dismissal of the petition with prejudice, citing the case of *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue*.

Preliminarily, it should be recalled that in the October 25, 2021 Order, the parties were given a period of ten (10) days within which to file their respective memoranda **or** in the case of petitioner, a Motion to withdraw, at his option. Considering that the **Motion (to Withdraw Petition for Review)** was filed only on November 18, 2021 or fourteen (14) days from the lapse of the 10-day period granted by Court, it is therefore apparent that the motion was filed way beyond the period granted.

Similarly, in the Resolution dated December 14, 2021, the Court gave respondent a period of five (5) days from receipt thereof to file his Comment on Petitioner's Motion to Withdraw Petition for Review. A cursory look at the pertinent dates reveals, as follows: a.) that respondent COC and the OSG received the said Resolution on February 8, 2022 and February 15, 2022, respectively; b.) counting five (5) days therefrom, respondent had until February 14, 2022, while respondent OSG had until February 21, 2022, within which to file their comment to petitioner's motion;[1] and c) that respondent's **Comment [On petitioner's Motion (to Withdraw Petition for Review) dated November 16, 2021]** were filed only on February 24, 2022 and March 9, 2022. Hence, the same were likewise belatedly filed.

In view thereof, and considering that petitioner already filed its Memorandum on respondent's request for dismissal, the submission of petitioner's **Motion (to Withdraw Petition for Review)** and respondent's **Comment [On petitioner's Motion (to Withdraw Petition for Review) dated November 16, 2021]** should be merely noted without action for being filed out of time.

Nevertheless, even assuming that the same were timely filed, it is imperative for the Court to first address respondent's request for dismissal of the case considering that some of the allegations

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[1] The next working day considering that February 13, 2022 and February 20, 2022 both fell on a Sunday, pursuant to Section 1, Rule 22 of the Rules of Court which provides that if the last day of the period falls on a Saturday, a Sunday, or a legal holiday, the time shall not run until the next working day.

contained therein are also included in respondent's comment to petitioner's motion to withdraw.

Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

> **Section *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. *(Emphasis supplied)*

Pertinently, among the provisions adopted in the Court of Tax Appeals per CTA *En Banc* Resolution No. 9-2020 are Sections 4 and 5, Rule 7 of the 2019 Amendments to the 1997 Rules of Civil Procedure which read:

> **Section 4. *Verification.*** – Except when otherwise specifically required by law or rule, pleadings need not be under oath or verified.
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> A pleading is verified by an affidavit of an affiant duly authorized to sign said verification. **The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading**, and shall allege the following attestations:
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> (a) The allegations in the pleading are true and correct based on his or her personal knowledge, or based on authentic documents;
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> (b) The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(c) The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

The signature of the affiant shall further serve as a certification of the truthfulness of the allegations in the pleading.

A pleading required to be verified that contains a verification based on "information and belief," or upon "knowledge, information and belief," or **lacks a proper verification, shall be treated as an unsigned pleading**.

Section ***5. Certification against forum shopping.*** – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he [or she] has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his [or her] knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he [or she] should thereafter learn that the same or similar action or claim has been filed or is pending, he [or she] shall report that fact within five (5) calendar days therefrom to the court wherein his [or her] aforesaid complaint or initiatory pleading has been filed.

The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of

> court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his [or her] counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. *(Emphasis supplied)*

Applying the foregoing provisions, and after perusal of the Petition for Review, the Court finds that petitioner failed to attach the Verification as required by Section 4, Rule 7 of the adopted provisions of the 2019 Amendments to the 1997 Rules of Civil Procedure. Petitioner also failed to attach the Certification of Non-Forum Shopping provided for in Section 5 of the same rule. Petitioner likewise failed to attach a Special Power of Attorney or Secretary's Certificate indicating that the counsel for petitioner is duly authorized to represent the petitioner in this case. Thus, petitioner clearly failed to comply with the mandatory requirements in filing a Petition before this Court.

In *Shipside Incorporated vs. The Court of Appeals, et al.,*[2] the Supreme Court stated certain rules regarding verification and certification against forum shopping, to wit:

> "The Court has consistently held that the requirement regarding verification of a pleading is formal, not jurisdictional *(Uy v. LandBank,* G.R. No. 136100, July 24, 2000). Such requirement is simply a condition affecting the form of the pleading, non-compliance with which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.

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[2] G.R. No. 143377, February 20, 2001.

> On the other hand, the lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition. Section 5, Rule 45 of the 1997 Rules of Civil Procedure provides that the failure of the petitioner to submit the required documents that should accompany the petition, including the certification against forum shopping, shall be sufficient ground for the dismissal thereof. The same rules applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation."

Prescinding from above, it follows that while the requirement regarding verification of a pleading is merely formal and not jurisdictional in nature; the lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition and shall be sufficient ground for the dismissal thereof.

It bears stressing that petitioner was already apprised on the technical lapses of its petition as early as July 2021 when it received a copy of respondent's Answer to the Petition. From the time it was given notice of such omission until the time before it filed the Manifestation on December 9, 2021, no attempt on the part of the petitioner has been made to rectify his error by filing the required verification and certification against forum shopping.

Notably, during the October 25, 2021 hearing, petitioner advanced no explanation as to why it overlooked such jurisdictional requirement for months when the same was already brought to their attention.

Moreover, during the same hearing, the Court, at the instance of petitioner, allowed the immediate submission of the said Verification and Certification against forum shopping. However, petitioner again ignored the submission of the same as it was only on December 9, 2021, or more than a month after the said hearing, that it filed the Manifestation with the required Verification and Certification on Non-Forum Shopping. Even in the said Manifestation, petitioner failed to allege any justifiable ground to warrant the admission of the belatedly filed Verification and Certification on Non-Forum Shopping.

In this regard, it must be noted that while it is true that in some cases, the Court considered such a belated submission as substantial compliance, it "did so only on sufficient and justifiable grounds that compelled a liberal approach while avoiding the effective negation of the intent of the rule on non-forum shopping".[3]

Relevantly, according to petitioner, the special and compelling reason that would excuse the belated filing of petitioner of the certificate of non-forum shopping is that it was deprived of its property. However, aside from the photocopies of assailed Order of the Commissioner of Customs dated March 2, 2021 and SPS Import Clearance, there was nothing in the records which would support petitioner's allegations. Also, as will be discussed, petitioner likewise failed to attach material portions of the records which could have helped the Court in ascertaining the merits of its averments.

For these reasons, the Court finds that despite the subsequent submission by petitioner of the required Verification and Certification of Non-Forum Shopping coupled with the Secretary's Certificate, there has neither been substantial compliance nor the presence of special circumstances and/or compelling reasons for the Court to warrant the relaxation of the procedural rules. Petitioner's belated efforts to remedy his negligence cannot be countenanced under the guise of a liberal application of the rules.

The Court is not unmindful of the adverse consequence to petitioner of the dismissal of its petition solely on so-called technical grounds. Nonetheless, the Court holds that compliance with the certification requirement on non-forum shopping should not be made subject to a party's afterthought, lest the policy of the law be undermined.[4]

As to the failure of the petitioner to attach other material portions of the record, the requirement in Section 2 of Rule 42 of the RROC, to attach relevant pleadings and documents to the petition, shall be read in relation to Section 3 of the same Rule, which states that failure to comply with any of the documentary requirements which should accompany the petition, shall be sufficient ground for the dismissal of the petition.

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[3] *Anderson vs. Ho,* G.R. No. 172590, January 7, 2013.
[4] *Melo vs. Court of Appeals,* G.R. No. 123686, November 16, 1999.

At the outset, Sections 3(a) and 4(a), Rule 8 of the RRCTA, as amended, provide:

> "**SEC. 3.** *Who may appeal; period to file petition.* – (a) **A party adversely affected** by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or **by a decision or ruling of the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling** xxx. (n)
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> xxx xxx xxx
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> **SEC. 4.** *Where to appeal; mode of appeal.* – (a) **An appeal from** a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, **the decision or ruling of the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, **shall be taken to the Court by filing before it a petition for review <u>as provided in Rule 42 of the Rules of Court</u>**. The Court in Division shall act on the appeal. (n)" (*Emphasis and underscoring supplied)*

Relative thereto, Sections 2 and 3 of Rule 42 of the Rules of Court, as amended[5], provide:

> "Section 2. *Form and contents.* – **The petition** shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and **shall** (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) **indicate the specific material dates showing that it was filed on time**; (c) **set forth concisely a**

[5] 2019 Amendments to the 1997 Rules of Civil Procedure (A.M. No. 19-10-20-SC).

> **statement of the matters involved, the issues raised, the specification of errors of fact or law, or both**, allegedly committed by the Regional Trial Court, and **the reasons or arguments relied upon for the allowance of the appeal**; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition. The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom. (n)
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> Section 3. *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**. (n)" (*Emphasis supplied*)

A reading of the petition shows that the relief being sought by petitioner in its prayer is for the Court to reverse and set aside the Order of the Commissioner of Customs and reinstate and affirm the undated Order of the Acting District Collector *in toto*. Thus, there can be no denying that the alleged undated Order of the Acting District Collector is of utmost relevance. Hence, petitioner's failure to attach a copy thereof as required by the rules is an omission and infirmity that cannot simply be ignored as it is likewise a sufficient ground for the dismissal of the petition.

In fine, procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules.[6] Thus, the above-quoted provisions of the Rules of Court ought to be followed.

Corollarily, it is well-settled that the right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[7] An appealing party must strictly comply with the requisites laid down in the Rules of Court.[8] Deviations from the Rules cannot be tolerated.[9] The rationale for this strict attitude is not difficult to appreciate as the Rules are designed to facilitate the orderly disposition of appealed cases.[10]

With the foregoing findings, the Court deems it unnecessary to address the other issues raised by both parties.

WHEREFORE, premises considered, the Petition for Review filed on March 18, 2021 is hereby **DISMISSED**.

SO ORDERED.

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

(On Official Business)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

Lanee Cui-David
LANEE S. CUI-DAVID
Associate Justice

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[6] *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010.
[7] *Mendoza vs. United Coconut Planters Bank, Inc.*, G.R. No. 165575, February 2, 2011.
[8] *Id.*
[9] *Baniqued vs. Ramos*, G.R. No. 158615, March 4, 2005.
[10] *MCA-MBF Countdown Cards Philippines, Inc., et al. vs. MBF Card International Limited and MBF Discount Card Limited*, G.R. No. 173586, March 14, 2012.