REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MILLIONSTAR GRAINS CORP., Represented by its President/General Manager, MS. JAENA BAUTISTA-MANUNTAG, *Petitioner,*	**CTA CASE NO. 10771**
	Members:
	CASTAÑEDA, JR., *Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
-versus-	
HON. DISTRICT COLLECTOR OF CUSTOMS and HON. REY LEONARDO B. GUERRERO, Commissioner of Bureau of Customs, *Respondents.*	Promulgated: JUN 07 2022 1:48 PM

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RESOLUTION

For this Court's resolution is respondents' **Motion to Dismiss,** with petitioner's **Opposition [Re: Respondents' Motion to Dismiss]**.

The antecedent facts follow.

On 18 October 2021, petitioner paid the amount of P4,045,044.78 to respondents for the duties and taxes pertaining to rice shipments under Statement of Settlement of Duties and Taxes ("**SSDT**") Reference No. C-317719, [1] Declarant's Reference No. MSGC1101401, Assessment Reference No. L454412, for Entry No. C-317719. Petitioner made these payments under protest. Petitioner alleges that respondents made inappropriate valuations of its rice shipments, resulting in excessive payments of duties.[2]

On 17 November 2021, petitioner filed its Protest and Appeal for Duty and Tax Refund ("**Protest**") to respondents,[3]

[1] Rollo, p. 21.
[2] *Id*, p. 7; Petition for Review, p. 2, par. 6.
[3] *Id*, p. 18, Petition for Review, Annex "I".

alleging non-conformity with the applicable and proper valuation system under Section 701 of Republic Act ("**RA**") No. 10863, otherwise known as the Customs Modernization and Tariff Act ("**CMTA**"). According to the Protest, the excess amount paid is P1,120,935.48.

On 21 December 2021, petitioner further filed a Motion for Reconsideration (of the in-action [*sic*] of the Hon. Commissioner of Customs).[4] Petitioner cited Section 1110 of the CMTA, which provides that "when a protest is filed in proper form, the Commissioner shall render a decision within thirty (30) days from receipt of the protest."

Having received no decision or resolution from the said respondent, petitioner filed a Petition for Review before this Court on 16 February 2022.[5]

Summons was issued to respondents on 21 February 2022 and was received by respondents on 3 March 2022.[6]

On 24 February 2022, respondents filed their Motion to Dismiss via registered mail, which was received by the Court on 6 April 2022. In response thereto, petitioner filed its Opposition [Re: Respondents' Motion to Dismiss] via registered mail on 4 April 2022, which was received by the Court on 12 April 2022.

In their Motion to Dismiss, respondents argue that the protest was not timely filed since it was filed beyond the fifteen (15)-day period provided under Section 1106 of the CMTA. Considering that the assessment has already attained finality, respondents submit that the Court has no authority to entertain the instant Petition.

In its Opposition, petitioner argued that the claim for refund is in accordance with the civil law principle of *solutio indebiti*. Petitioner forwards that it filed its Protest within the thirty (30)-day period provided under Customs Memorandum Order ("**CMO**") No. 4-2021.[7]

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[4] *Id*, p. 16.
[5] *Id*, p. 6.
[6] *Id*, p. 36.
[7] Codification of the Appeals Procedures Under the Customs Modernization and Tariff Act (CMTA) and Relevant Rules and Regulations, 22 January 2021.

Basically, the issue is whether the assessment against petitioner has attained finality, depriving this Court of jurisdiction to entertain the case.

We resolve.

Section 1101 of the CMTA provides:

> *Section 1101. Valuation Ruling.* — An importer or exporter may file a written application for an advance valuation ruling on the proper application of a specific method on customs valuation of specific goods as prescribed in Title VII, Chapter 1 of this Act.
>
> The application for a valuation ruling shall be filed with the Commissioner who shall issue a ruling within thirty (30) days from submission of the application form and supporting documents as may be required by rules and regulations.
>
> When the valuation method of goods not subject of an application for advance valuation ruling or the declared customs value is in dispute, **<u>the matter shall be resolved in accordance with Section 1106 of this Act on "protest"</u>**. [*Emphasis and underscoring supplied.*]

Accordingly, reference should be made to Section 1106 of the CMTA, which further provides:

> *Section 1106. Protest.* — When a ruling or decision of the District Collector or customs officer involving goods with valuation, rules of origin, and other customs issues is made, except the fixing of fines in seizure cases, the party adversely affected may appeal by way of protest against such ruling or decision by presenting to the Commissioner **<u>at the time when payment of the amount claimed to be due the government is made, or within fifteen (15) days thereafter</u>**, a written protest setting forth the objection to the ruling or decision in question and the reasons therefore.
>
> Subject to the approval of the Secretary of Finance, the Commissioner shall provide such rules and regulations as to the requirement for payment or nonpayment of the disputed amount and in case of nonpayment, the release of the importation under protest upon posting of sufficient security. [*Emphasis and underscoring supplied.*]

Another provision pertaining to periods of appeal is provided under Section 913 of the CMTA, *viz.*:

> *Section 913. Claims for Refund.* — All claims and application for refund of duties and taxes **shall be made in writing and filed with the Bureau within twelve (12) months from the date of payment of duties and taxes.**
>
> If, as a result of the refund of duties, a corresponding refund of internal revenue taxes on the same importation becomes due, the Bureau shall cause the refund of internal revenue taxes in favor of the importer after issuance of a certification from the Commissioner of Internal Revenue, when applicable.
>
> **The importer may file an appeal of a denial of a claim for refund or abatement, whether it is a full or partial denial, with the Commissioner within thirty (30) days from the date of the receipt of the denial**. The Commissioner shall render a decision within thirty (30) days from the receipt of all the necessary documents supporting the application. Within thirty (30) days from receipt of the decision of the Commissioner, the case may also be appealed to the CTA.
>
> Notwithstanding the provisions in the preceding paragraphs, the filing of claims for refund of national internal revenue taxes shall be governed by the provisions provided under the NIRC of 1997, as amended. [*Emphasis and underscoring supplied.*]

The CMTA provisions on a refund (Sections 903 to 913) and protest (Sections 114, 1100 to 1102, 1104, 1106 to 1110, 1126, 1128, and 1136) are implemented by Customs Administrative Order (CAO) No. 4-2019 [8] and 2-2020, [9] respectively.

Under Section 5 of CAO No. 4-2019, as implemented by CMO No. 25-2020,[10] a claim for refund is allowed when there is an error in the assessment or goods declaration,[11] among others, and that it "shall be made in writing and filed with the BOC within twelve (12) months from the date of payment of

[8] Duty Drawback, Refund and Abatement, 8 April 2019.
[9] Dispute Settlement and Protest, 14 January 2020.
[10] Guidelines on Refund and Tax Credit, 24 September 2020.
[11] SEC 5. General Provisions on Refund.
5.1. When Allowed. xxx
5.1.1. When there is an error in the assessment or goods declaration; xxx

duties and taxes"[12] with a payment of a processing fee[13] upon every application for a tax refund. Also, Section 4 of CMO No. 25-2020 provides that the notarized application claim for refund and its supporting documents, *inter alia,* shall be submitted by the claimant in its application for refund.

On the other hand, CAO No. 2-2020 provides the administrative remedies of an aggrieved importer pertaining to protests arising from customs valuation. Section 10 thereof provides that the aggrieved importer may appeal by way of protest in writing to the COC within fifteen (15) days from receipt of the adverse ruling of the District Collector or, when payment is made as a result of the adverse ruling, within fifteen (15) days from such payment.[14] Otherwise, the action of the District Collector shall be final and conclusive.[15]

The above appeal procedures are consolidated in CMO No. 4-2021,[16] as follows:

> *Section 4. Period and Manner of Appeal.* In cases where the decision of the Port, Office, or the Commissioner is adverse to the claimant or stakeholder, the following administrative and/or judicial appeal or remeqy may be availed of, depending

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[12] CMTA, SEC. 913. *Claims for Refund.* – All claims and application for refund of duties and taxes shall be made in writing and filed with the Bureau within twelve (12) months from the date of payment of duties and taxes.

If, as a result of the refund of duties, a corresponding refund of internal revenue taxes on the same importation becomes due, the Bureau shall cause the refund of internal revenue taxes in favor of the importer after issuance of a certification from the Commissioner of Internal Revenue, when applicable.

The importer may file an appeal of a denial of a claim for refund or abatement, whether it is a full or partial denial, with the Commissioner within thirty (30) days from the date of the receipt of the denial. The Commissioner shall render a decision within thirty (30) days from the receipt of all the necessary documents supporting the application. Within thirty (30) days from receipt of the decision of the Commissioner, the case may also be appealed to the CTA.

Notwithstanding the provisions in the preceding paragraphs, the filing of claims for refund of national internal revenue taxes shall be governed by the provisions provided under the NIRC of 1997, as amended.

[13] CAO 4-2019, SEC. 9. *Fees.* A processing fee shall be imposed upon every application for tax credit and Refund, xxx; CMO 25-2020, SEC. 8. *Fees.* 8.1. A processing fee shall be imposed upon every application for tax credit and Refund, xxx.

[14] CMTA, SEC. 1106. *Protest* – When a ruling or decision of the District Collector or customs officer involving goods with valuation, rules of origin, and other customs issues is made, except the fixing of fines in seizure cases, the party adversely affected may appeal by way of protest against such ruling or decision by presenting to the Commissioner at the time when payment of the amount claimed to be due the government is made, or within fifteen (15) days thereafter, a written protest setting forth the objection to the ruling or decision in question and the reasons therefore.

Subject to the approval of the Secretary of Finance, the Commissioner shall provide such rules and regulations as to the requirement for payment or nonpayment of the disputed amount and in case of nonpayment, the release of the importation under protest upon posting of sufficient security.

[15] CMTA, SEC. 1107. *Protest Exclusive Remedy in Protestable Case.* – In all cases subject to protest, the interested party who desires to have the action of the District Collector reviewed, shall file a protest as provided in Section 1106 of this Act, otherwise the action of the District Collector shall be final and conclusive.

[16] *Ibid.* Codification of the Appeals Procedures Under the Customs Modernization and Tariff Act (CMTA) and Relevant Rules and Regulations, 22 January 2021.

on the issue involved, and with the corresponding prescribed period under the CMTA:

TOPIC/ISSUE	**PERIOD**
Refund	Administrative: Appeal to the Commissioner within 30 days from receipt of denial of the District Collector Judicial: Appeal to CTA within 30 days from receipt of the Commissioner's decision
Valuation Rules of Origin Other customs issues (Except for fixing of fines in seizure cases)	Administrative: Appeal by way of Protest to the Commissioner upon payment or within 15 days from the receipt of the ruling of the Port.

Faced with two seemingly conflicting periods, this Court must determine whether the 15-day period under Section 1106 of the CMTA or the 30-day period under Section 913 of the CMTA applies. We quote the prayer of the petitioner in its Protest to respondents.

> WHEREFORE, given the foregoing premises, it is earnestly prayed of this Honorable Office of the Bureau of Customs Commissioner to grant unto the Protesting Appellant the appropriate duty/tax relief and easement from bearing the duty/tax burdens arising out of the excessive charges of customs duty/tax upon its rice shipments **by way of refund**, for equitable and just considerations.
>
> Protesting Appellant further prays that a corresponding order must be issued to enjoin all subordinate offices and persons acting under him to **rectify the wrongful duty valuation and imposition** and enforce a fair, equitable, and just processing of the duty/tax valuation as mandated and provided under the law; granting to the Protesting Appellant such other reliefs and remedies as may be deemed just and equitable in the premises. [*Emphasis and underscoring supplied.*]

As such, we rule that Section 1106 of the CMTA is applicable. The Protest primarily prays for a review of the valuation of the petitioner's goods, which will result in a refund by way of consequence. Captioned as a "Protest and Appeal for Duty and Tax Refund," we find that this is a Protest covered by Section 1106 of the CMTA.

In addition, the records are bereft of any allegation, much more proof that petitioner filed a notarized application for refund in accordance with the procedures prescribed under CMTA in relation to CAO 4-2019 and CMO 25-2020.

Accordingly, the 15-day period is applicable in this case. Considering that petitioner made its payment on 18 October 2021 and filed its Protest on 17 November 2021, 30 days after it made the payment, we rule that the Protest has not been timely filed.

This is further supported by petitioner's arguments in its Motion for Reconsideration (of the in-action [*sic*] of the Hon. Commissioner of Customs). We quote the third paragraph of petitioner's Motion:

> Section 1110 of Republic Act (RA) No. 10863, otherwise known as the Customs Modernization Tariff Act (CMTA) [sic] has mandated that: "When a protest is filed in proper form, the Commissioner shall render a decision within thirty (30) days from receipt of the protest.". Thirty-three (33) days have already passed, -- no resolution, ruling, or decision has been made and served up till now to herein Protesting Appellant.

By petitioner's submission, its filing with respondents is a protest covered by Chapter 2,[17] Title XI of the CMTA. In the same chapter is the 15-day period under Section 1106. Thus, this Court rules that the 15-day period is applicable as contended by respondents in their Motion to Dismiss.

Accordingly, we rule that this Court has no jurisdiction to entertain the instant Petition. A judgment becomes "final and executory" by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period.[18]

Further, Section 1107 of the CMTA states:

> *Section 1107. Protest Exclusive Remedy in Protestable Case.* — In all cases subject to protest, the interested party who desires to have the action of the District Collector reviewed, shall file a protest as provided in Section 1106 of this Act, **otherwise the action of the District Collector shall be final and conclusive**. [*Emphasis and underscoring supplied.*]

[17]Chapter 2: Protest, covers Section 1106 to 1110.
[18]Lim v. delos Santos, G.R. No. 172574, 31 July 2009, 612 SCRA 125-136, citing Social Security System v. Isip, G.R. No. 165417, 3 April 2007, 520 SCRA 310, 314.

Neither can the invocation of the quasi-contract of *solutio indebiti* be resorted to in this case to defeat the statutory periods of protest and appeal. In *Land Bank of the Philippines v. Bureau of Internal Revenue*, [19] the Supreme Court ruled that the prescriptive periods under the Civil Code pertaining to unjust enrichment are inapplicable to tax refunds:

> **Land Bank is mistaken in its contention that the claim for refund is governed by the Civil Code on quasi-contracts, or the rule on solutio indebiti, that prescribes in six years**. There is solutio indebiti when: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake and not through liberality or some other cause. **However, this legal precept does not apply to refund of taxes alleged to have been erroneously or illegally paid**. [*Emphasis and underscoring supplied.*]

When a court or tribunal has no jurisdiction over the subject matter, the only power it has is to **dismiss** the action.[20] Our hands are tied by the fact that the case had already attained finality long before it got here.[21]

WHEREFORE, premises considered, respondents' Motion to Dismiss is **GRANTED**. Petitioner's Petition for Review on CTA Case No. 10771 is **DISMISSED**.

SO ORDERED.

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

[19] G.R. No. 242319 (Notice), 16 June 2021, citing Commissioner of Internal Revenue v. San Miguel Corp., G.R. Nos. 180740 & 180910, 11 November 2019.
[20] *Supra* note **Error! Bookmark not defined.**.
[21] Coca-Cola Bottlers Phil. Inc. Sales Force Union vs. Coca-Cola Bottlers Phil. Inc., G.R. No. 155651, 28 July 2005, 502 SCRA 748-758.