REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF CUSTOMS,
Petitioner,

E.B. CASE NO. 333
(C.T.A. Case No. 6859)

- versus -

Present:

ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, JJ.

MARINA SALES, INC.,
Respondent.

Promulgated:

APR 1 1 2008

x - x

RESOLUTION

CASANOVA, J:

Petitioner - Commissioner of Customs filed his Petition for Review[1] with the Court *En Banc* on December 7, 2007. The petition is questioning the Decision[2] of the CTA *Second Division* ("Second Division") promulgated October 31, 2007 in CTA Case No. 6859 entitled, "*Marina Sales, Inc., petitioner vs. Commissioner of Customs and Bureau of Customs, respondents,*" which was ruled by the *Second Division* in favor of herein respondent, Marina Sales, Inc.

---

[1] *CTA En Banc Rollo, pp. 7-28.*
[2] *Annex "A", CTA En Banc Rollo, pp.36-62.*

A careful scrutiny of the record of this case showed that petitioner failed to file before the *Second Division* the required Motion for Reconsideration before elevating his case to the CTA Court *En Banc*.

Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals provided for the following rule, to wit:

> **"RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> **SECTION 1.** ***Review of cases in the Court en banc.*** **-** In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division **must be preceded** by the filing of a timely <u>motion for reconsideration or new trial with the Division</u>." (*Emphasis and underscoring Ours*)

In statutory construction, the use of the word "must" indicates that the requirement is mandatory[3]. Furthermore, the word "must" connotes an imperative act or operates to simply impose a duty which may be enforced.[4] It is true the word "must" is sometimes construed as "may" – permissive – but this is only when the context requires it. Where the context plainly shows the provision to be mandatory, the word "must" is a command and cannot be construed as permissive, but must be given the signification which it imparts.[5]

It is worthy to note that the Supreme Court ruled that a Motion for Reconsideration is mandatory as a precondition to the filing of a Petition for Review under Rule 43 of the Rules of Court.[6]

WHEREFORE, applying by analogy the above ruling of the Supreme Court and taking into consideration the mandatory provision provided by Section 1 of Rule 8 of the Revised Rules of the Court of Tax Appeals and considering

[3] *People vs. Mauricio, 353 SCRA 114, p. 125 [2001].*
[4] *Loyola Grand Villas Homeowners (South) Association, Inc. vs. Court of Appeals, 276 SCRA 681, p. 692 [1997].*
[5] *Gibbs vs. Gibbs, 73 p. 641, 653, 26 Utah 382, Words and Phrases, Volume 27.*
[6] *Social Security Commission vs. Court of Appeals, 439 SCRA 239, pp. 251-252 [2004].*

886

further that petitioner did not file a Motion for Reconsideration with the *Second Division* before elevating the case to the Court *En Banc*, which eventually deprived the *Second Division* of an opportunity to amend, modify, reverse or correct its mistake or error, if there be, petitioner's Petition for Review is hereby **DISMISSED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice