REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PHILIPPINES AIRASIA, INC., *Petitioner,*	**CTA CASE NO. 10144**
	Members:
-versus-	**RINGPIS-LIBAN,** *PJ* and *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ*
COMMISSIONER OF CUSTOMS, *Respondent.*	Promulgated: JAN 20 2026

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DECISION

RINGPIS-LIBAN, ***P.J.:***

THE CASE

The *Petition for Review* prays that the Court render judgment finding petitioner not liable for the penal amount of the surety bonds for importations in 2016 and 2017 in the aggregate sum of ₱359,989,525.00.[1]

THE PARTIES

Petitioner Philippines Airasia, Inc. is a corporation organized and existing under the laws of the Republic of the Philippines, is a holder of a congressional franchise under Republic Act (RA) No. 9183. Under its congressional franchise, petitioner is allowed to operate and maintain a commercial airline or offer transport services for the carriage of passengers, mail, and goods by air, both domestic and international.[2]

[1] Statement of the Case, Pre-Trial Order dated May 11, 2022, Docket – Vol. 3, p. 1211.
[2] Par. 1, Stipulated Facts, *Joint Stipulations of Facts and Issues* (JSFI), Docket – Vol. 3, -p. 1168.

Respondent is the Commissioner of the Bureau of Customs (BOC) who is tasked to supervise and enforce tariff and customs laws in the Philippines.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On January 10, 2017, petitioner requested from the Ninoy Aquino International Airport (NAIA) Customshouse, BOC, that it be allowed to post surety bonds for importations for 2017 to secure the conditional release of its importations to be used solely in its transport operations.[4]

Petitioner posted various surety bonds issued by the AFP General Insurance Corporation to secure the conditional release of its importation in 2017.[5]

On February 28, 2018, petitioner received a demand letter from the Bonds Division of the BOC-NAIA, ordering it to remit to the BOC the sum of ₱418,109,621.50, representing the penal amount of bonds plus other charges for entries not covered by Indorsements or Tax Exemption Certificates that are duly issued by the Department of Finance (DOF).[6]

On March 12, 2018, petitioner filed an answer to the demand letter dated February 22, 2018.[7]

Thereafter, on May 16, 2018, the BOC-NAIA issued a *Final Demand Letter*, ordering petitioner to remit to the BOC the sum of ₱418,109,621.50, representing the penal amount of bonds plus other charges. This *Final Demand Letter* dated May 16, 2018 was received by petitioner on May 24, 2018.[8]

On June 4, 2018, petitioner filed the *Reply* to the *Final Demand Letter* dated May 16, 2018.[9]

The Law Division of the BOC-NAIA held three (3) hearings on September 4 and 18, 2018 and October 8, 2018. During the hearings, the authorized representatives of petitioner and AFP General Insurance Corporation, the company who provided the surety bonds, appeared to explain the parties' respective positions. The Chief of the Bonds Division, the Chief of

[3] Par. 2, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1168.
[4] Par. 3, Stipulated Facts, JSFI, Docket – Vol. 3, pp. 1168 to 1169.
[5] Par. 4, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1169.
[6] Par. 5, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1169.
[7] Par. 6, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1169.
[8] Par. 7, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1169; Exhibit "P-7", Docket – Vol. 4, pp. 1556 to 1560; Exhibit "R-1-3", Docket – Vol. 5, pp. 1997 to 2001.
[9] Par. 8, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1169; Exhibit "P-8", Docket – Vol. 4, pp. 1561 to 1562; Exhibit "R-1-5", Docket – Vol. 5, pp. 2007 to 2008.

the Liquidation and Billing Division of the BOC-NAIA, and the Deputy Collector for Assessment also appeared for the government.[10]

After the hearings were conducted by the Law Division of the BOC-NAIA, petitioner submitted its *Position Paper* on October 2, 2018. The Bonds Division, on the other hand, submitted a matrix of the due and demandable bonds subject of this case.[11]

On October 31, 2018, petitioner paid the amount of ₱20,918,202.00, representing the duties and taxes due on merchandise items which are not covered by the exemption under its congressional franchise. After the Liquidation and Billing Division reconciled the liquidated entries, the total amount of ₱418,109,621.50, representing the penal amount of the bonds was reduced to ₱359,989,525.00. As stated in the Resolution, such amount was indicated in the Audit Observation for Unsettled Due and Demandable Bonds submitted by the Chief of the Bonds Division to the Commission on Audit dated April 29, 2019.[12]

On December 28, 2018, petitioner, through its counsel, submitted a supplemental letter to explain why it should not be held liable for the penal amount of bonds.[13]

Thereafter, on February 14, 2019, petitioner submitted a list of entries related to its importations in 2016 and 2017, and the status of the DOF Indorsements related thereto.[14]

On May 15, 2019, petitioner received a copy of the Resolution dated May 9, 2019 issued by the District Collector of the BOC-NAIA, recommending the issuance of a *Final Demand Letter*, the dispositive portion of which states:[15]

> "**Premises considered** and pursuant to Customs Memorandum Order No. 15-1992, the records of the case is hereby remanded to the Chief of the Bonds Division directing her to prepare and issue an updated final demand letter against Airasia and AFP General Insurance Corporation for payment of the penal amount of the subject surety bonds in the aggregate sum of **Three Hundred Fifty Nine Million Nine Hundred Eighty Nine Thousand Five Hundred Twenty Five Pesos (<u>Php359,989,525.00</u>), and if unheeded, referral of the records hereof to the Commissioner of Customs (Attention: Director, Legal Service) for the issuance of the corresponding Order of Forfeiture of bonds pursuant to Customs**

[10] Par. 9, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1169.
[11] Par. 10, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1169; Exhibit "P-9", Docket – Vol. 4, pp. 1563 to 1575.
[12] Par. 11, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1169.
[13] Par. 12, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1170; Exhibit "P-11", Docket – Vol. 4, pp. 1578 to 1583.
[14] Par. 13, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1170; Exhibit "P-12", Docket – Vol. 4, p. 1584.
[15] Par. 14, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1170; Exhibit "R-6-2", BOC Records, pp. 113 to 119.

> **Memorandum Order No. 8-2007. This Office further recommends that unless and until the earlier amount of this accountability is fully settled, the renewal of Airasia's license to operate a Customs Bonded Warehouse No. 199 should be disallowed.**
>
> SO ORDERED."

On May 21, 2019, petitioner received a copy of the *Final Demand Letter* dated May 15, 2019 issued by the BOC-NAIA, ordering petitioner to remit to the BOC within ten (10) days, the amount of ₱359,989,525.00, representing the penal amount of the bonds plus other charges. This *Final Demand Letter* dated May 15, 2019 further states that in case of failure and continued disregard of the demand, the BOC will be constrained to hold the release of current/future importations and will also take further legal action against petitioner to protect the interest of the government.[16]

On May 29, 2019, petitioner filed an appeal by way of *Protest* with the Office of the Commissioner pursuant to Section 1106 of RA No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA). On the same date, petitioner likewise filed a letter addressed to BOC-NAIA, informing the Chief of the Bonds Division that the Resolution dated May 9, 2019 is the subject of the *Protest* which is currently pending with the Office of the Commissioner.[17]

On July 23, 2019, petitioner filed a letter with the BOC-NAIA, addressed to the Chief of the Bonds Division, to reiterate that the Resolution dated May 9, 2019 is the subject of the *Protest* which is currently pending with the Office of the Commissioner.[18]

On July 25, 2019, petitioner received a copy of the response from the BOC-NAIA, signed by the Chief of the Bonds Division, stating that the Resolution of the District Collector dated May 9, 2019 is authoritative and instructive, thereby mandating the settlement of the recomputed penal amount of the surety bonds.[19]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed its *Petition for Review* on July 29, 2019.[20]

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[16] Par. 15, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1170; Exhibit "P-14", Docket – Vol. 4, pp. 1598 to 1600; Exhibit "R-7", Docket – Vol. 5, pp. 2156 to 2158.

[17] Par. 16, Stipulated Facts, JSFI, Docket – Vol. 3, pp. 1170 to 1171; Exhibit "P-15", Docket – Vol. 4, pp. 1601 to 1617.

[18] Par. 17, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1171.

[19] Par. 18, Stipulated Facts, JSFI, Docket – Vol. 3, p. 1171.

[20] Docket – Vol. I, pp. 10 to 29.

Thereafter, on September 23, 2019, respondent posted his *Answer*,[21] interposing the following special and affirmative defenses, to wit: (1) petitioner has failed to exhaust administrative remedies; (2) petitioner has failed to demonstrate that it is entitled to tax exemption on its importations; and (3) petitioner is liable for the penal amount of the surety bonds.

On September 26, 2019, petitioner filed a *Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction*.[22]

During the hearing held on October 16, 2019 for the said *Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction*, which the Court treated as a *Motion for Suspension of Collection of Tax*, petitioner presented the testimony of its Legal and Compliance Manager, Atty. Julius S. Polinga.[23] The Court also set the Pre-Trial Conference on February 13, 2020 during the said hearing.

Respondent then posted his *Opposition (to Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)* on October 22, 2019.[24]

On October 23, 2019, petitioner filed its *Formal Offer of Evidence*,[25] to which respondent posted his *Comment (on Petitioner's Formal Offer of Evidence dated 23 October 2019)* on October 29, 2019.[26] In the Resolution dated December 6, 2019,[27] the Court admitted all of petitioner's offered exhibits.

Subsequently, in the Resolution dated January 20, 2020,[28] the Court, without prejudicing the final outcome of the issues in such a manner as not to render ineffectual and nugatory the judgment that will be rendered in the case, granted petitioner's *Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction* only insofar as the collection of the penal amount of the bonds is concerned. Further, the Court ordered respondent and any of its officers and/or employees to cease and desist from committing any or all acts to collect the alleged penal amount of the bonds in the total amount of ₱359,989,252.00; provided that within ten (10) days from receipt thereof, petitioner files a cash bond in the amount of ₱359,989,252.00 or posts a surety bond equivalent to one and a half (1.5) of the said amount or ₱539,984,287.50.

On February 7, 2020, petitioner filed an *Omnibus Motion (i) To Refer the Case to Mediation; (ii) To Reset Pre-Trial Conference; (iii) To Request Additional Time to Post*

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[21] Docket – Vol. I, pp. 239 to 248.
[22] Docket – Vol. I, pp. 230 to 236.
[23] Exhibit "P-3", Docket – Vol. I, pp. 156 to 162; Minutes of the hearing held on, and Order dated, October 16, 2019, Docket – Vol. I, pp. 256 to 258.
[24] Docket – Vol. I, pp. 376 to 380.
[25] Docket – Vol. I, pp. 265 to 268.
[26] Docket – Vol. I, pp. 389 to 392.
[27] Docket – Vol. I, pp. 399 to 400.
[28] Docket – Vol. I, pp. 402 to 406.

Bond; and (iv) To Reduce the Amount of the Bond,[29] to which respondent posted his *Comment (re: Motion to Reduce the Amount of the Bond)* on February 28, 2020.[30]

In the Resolution dated February 13, 2020,[31] the Court granted petitioner's *Motion to Request Additional Time to Post Bond*, its *Motion to Refer the Case to Mediation*, and its *Motion to Reset Pre-Trial Conference*. As prayed for, the Pre-Trial Conference previously scheduled on February 13, 2020 was cancelled until further notice. Further, the case was set for mediation proceedings on February 27, 2020 and the parties were ordered to immediately proceed and to personally appear, or through their authorized representatives, at the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA). However, the parties failed to reach an agreement before the PMC-CTA.[32]

On February 27, 2020, respondent filed his letter of even date,[33] transmitting the BOC Records of the case, contained in two (2) folders, consisting of 779 pages.

In the Resolution dated October 14, 2020,[34] the Court granted petitioner's *Motion to Reduce the Amount of Bond*, and reduced petitioner's Surety Bond to 100% of the amount assessed or in the total amount of ₱359,989,252.00.

After being granted several extensions,[35] petitioner filed its *Compliance* with the Court's Resolution dated October 14, 2020.[36]

The Pre-Trial Conference was eventually reset to, and held on, March 3, 2022.[37] Prior thereto, respondent's *Pre-Trial Brief* was filed on February 7, 2020,[38] while petitioner's *Pre-Trial Brief* was submitted on February 28, 2022.[39]

[29] Docket – Vol. II, pp. 681 to 686.
[30] Docket – Vol. II, pp. 694 to 697.
[31] Docket – Vol. II, pp. 690 to 691.
[32] *Mediator's Report* dated June 24, 2021, Docket – Vol. II, p. 874; Resolution dated September 27, 2021, Docket – Vol. II, pp. 883 to 884.
[33] Docket – Vol. II, p. 692.
[34] Docket – Vol. II, pp. 704 to 708.
[35] Petitioner's *Motion for Additional Time to Post Bond* dated December 2, 2020, Docket – Vol. II, pp. 712 to 715; Resolution dated December 17, 2020, Docket – Vol. II, p. 718; petitioner's *Motion for Additional Time to Post Bond* dated January 4, 2021, Docket – Vol. II, pp. 719 to 722; Resolution dated January 14, 2021, Docket – Vol. II, p. 726; petitioner's *Third Motion for Additional Time to Post Bond* dated January 19, 2021, Docket – Vol. II, pp. 727 to 730; Resolution dated January 25, 2021, Docket – Vol. II, p. 733; petitioner's *Fourth Motion for Additional Time to Post Bond* dated February 18, 2021, Docket – Vol. II, pp. 734 to 737; respondent's *Comment (re: Fourth Motion for Additional Time to Post Bond)* dated May 24, 2021, Docket – Vol. II, pp. 816 to 818; Resolution dated July 6, 2021, Docket – Vol. II, pp. 872 to 873.
[36] Docket – Vol. II, pp. 822 to 823.
[37] Resolution dated September 27, 2021, Docket – Vol. II, pp. 883 to 884; Petitioner's *Motion to Reset Pre-Trial* dated October 26, 2021, Docket – Vol. II, pp. 885 to 888; Resolution dated November 10, 2021, Docket – Vol. II, p. 891; Minutes of the hearing held on, and Order dated, March 3, 2022, Docket – Vol. 3, pp. 1157 and 1160 to 1161, respectively.
[38] Docket – Vol. I, pp. 411 to 428.
[39] Docket – Vol. II, pp. 894 to 904.

On April 19, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[40] which was admitted and approved by the Court in its Resolution dated April 28, 2022,[41] thereby deeming the termination of the Pre-Trial. Thereafter, the Pre-Trial Order dated May 11, 2022 was issued.[42]

Trial then ensued, with both parties presenting and offering their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Rosanna Gracia Dela Cruz,[43] petitioner's Head of the Legal and Compliance Department; (2) Mr. Jereme D. Toreja[44] petitioner's Head of the Engineering Department; (3) Ms. Madonna Mia S. Dayego,[45] the Court-commissioned Independent Certified Public Accountant (ICPA);[46] (4) Ms. Zenaida Flamiano,[47] petitioner's Assistant Manager of the Logistics Department.

The ICPA *Report* was filed on September 27, 2022.[48]

On March 27, 2023, petitioner filed its *Formal Offer of Evidence with Motion to Set One Commissioner's Hearing*,[49] to which respondent posted his *Comment (on Petitioner's Formal Offer of Evidence dated 27 March 2023)* on April 11, 2023.[50] The Court then granted petitioner's *Motion to Set One Commissioner's Hearing* in its Minute Resolution dated April 26, 2023, setting the Commissioner's Hearing on May 16, 2023.[51] In the Resolution dated February 2, 2024,[52] the Court admitted petitioner's offered exhibits.

For his part, respondent offered the testimony of Atty. Vincent James V. Fajardo of the Bonds Division of the NAIA Customshouse, BOC.[53]

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40 Docket – Vol. 3, pp. 1168 to1184.
41 Docket – Vol. 3, pp. 1190 to 1191.
42 Docket – Vol. 3, pp. 1211 to 1223.
43 Exhibit "P-1", Docket – Vol. 3, pp. 1285 to 1292; Minutes of the hearing held on, and Order dated, August 10, 2022, Docket – Vol. 3, pp. 1408 and 1410 to 1411, respectively.
44 Exhibit "P-2", Docket – Vol. 3, pp. 1085 to 1090; Minutes of the hearing held on, and Order dated, August 10, 2022, Docket – Vol. 3, pp. 1408 and 1410 to 1411, respectively.
45 Exhibit "P-100", Docket – Vol. 3, pp. 1463 to 1471; Minutes of the hearing held on November 8, 2022, Docket – Vol. 3, p. 1477.
46 *Oath of Commission* dated August 10, 2022, Docket – Vol. 3, p. 1409; Minutes of the hearing held on, and Order dated, August 10, 2022, Docket – Vol. 3, pp. 1408 and 1410 to 1411, respectively.
47 Exhibit "P-3", Docket – Vol. 3, pp. 1482 to 1489; Minutes of the hearing held on, and Order dated, March 7, 2023, Docket – Vol. 3, p. 1497 and Docket – Vol. 4, pp. 1498 to 1499, respectively.
48 Exhibit "P-109", Docket – Vol. 3, pp. 1414 to 1451.
49 Docket – Vol. 4, pp. 1501 to 1513.
50 Docket – Vol. 4, pp. 1735 to 1742.
51 Docket – Vol. 4, p. 1746.
52 Docket – Vol. 4, pp. 1763 to 1764.
53 Exhibit "R-9", Docket – Vol. 4, pp. 1768 to 1774; Minutes of the hearing held on, and Order dated, August 8, 2024, Docket – Vol. 5, pp. 1968 and 1969-A, respectively.

On August 12, 2024, respondent filed his *Formal Offer of Evidence,*[54] to which petitioner submitted its *Comment (Re: Formal Offer of Evidence dated 9 August 2024)* on August 27, 2024.[55] The Court admitted all of respondent's offered exhibits in the Resolution dated October 4, 2024.[56]

Respondent's *Memorandum* was posted on November 28, 2024,[57] while petitioner's *Memorandum* was filed *via* accredited courier on December 13, 2024.[58]

The case was considered submitted for decision on January 20, 2025.[59]

THE STIPULATED ISSUE

The parties submit the following issue for this Court's resolution, to wit:

> "**Whether or not Petitioner is liable for the penal amount of the surety bonds in the aggregate sum of PhP 359,989,525.00 assessed and demanded by Respondent.**
>
> 20. This issue may be broken down into the following sub-issues:
>
> 20.1. Whether Petitioner's congressional franchise requires the submission of the tax exemption certificates in order to be entitled to tax and duty-free importation of aircrafts, equipment and parts.
>
> 20.2. Whether Petitioner has complied with the conditions under its congressional franchise in order to be entitled to the tax and duty-free importation of aircrafts, equipment and parts."[60]

Petitioner's arguments:

Petitioner argues that the District Collector of BOC-NAIA erred in holding it liable for the penal amount of bonds, considering that: (1) it is a holder of a congressional franchise, which, pursuant to its "equality clause", exempts petitioner from payment of all taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery and spare parts; (2) the provisions of the CMTA imposing conditions on the tax- and duty-free importation of petitioner did not operate to repeal its tax exemption privileges under its congressional franchise, which was a special law; and (3) assuming, for the sake of argument, that the conditions provided under the CMTA apply to petitioner, it has complied in good faith with the requirement

[54] Docket – Vol. 5, pp. 1970 to 1978.
[55] Docket – Vol. 5, pp. 2159 to 2162.
[56] Docket– Vol. 5, p. 2166.
[57] Docket – Vol. 5, pp. 2168 to 2195.
[58] Docket – Vol. 5, pp. 2203 to 2225.
[59] Minute Resolution dated January 20, 2025, Docket – Vol. 5, p. 1970.
[60] Pars. 19 to 20, Stipulated Issues, JSFI, Docket – Vol. 3, p. 1171.

provided under Customs Administrative Order No. 5-91 to obtain Tax Exemption Certificates from the DOF and their delayed release is beyond petitioner's control and should not adversely affect the exemption granted to it.

Respondent's counter-arguments:

Respondent contends that the petition should be dismissed for being procedurally infirm; that petitioner has failed to demonstrate that it is entitled to tax exemption on its importations; and that petitioner is liable for the penal amount of the surety bonds.

THE COURT'S RULING

The present *Petition for Review* must be dismissed on jurisdictional grounds.

Petitioner submits that Section 1106 of the CMTA provides that 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 respondent 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 therefor.

Petitioner claims that it received a copy of the Resolution of the District Collector of the BOC-NAIA on May 15, 2019. Thus, petitioner submits that the *Protest* it filed on May 29, 2019 with the Office of the Commissioner pursuant to Section 1106 of the CMTA is within the fifteen (15)-day period required by the said provision.

Moreover, petitioner states that Section 1110 of the CMTA provides that when a protest is filed in the proper form, respondent Commissioner shall render a decision within thirty (30) days from receipt of the protest. According to petitioner, since it filed the protest on May 29, 2019, the 30th day for the respondent to act on the protest was on June 28, 2019. However, petitioner states it did not receive a decision or resolution on the protest filed on May 29, 2019.

Citing Section 11 of RA No. 1125, as amended by RA No. 9282, petitioner states that a party adversely affected by a decision or inaction may file a petition with this Court. Moreover, petitioner cites the case of *Nestle Philippines, Inc. (Formerly Filipro, Inc.) vs. Honorable Court of Appeals, et al.* (*Nestle Philippines* case)[61] to bolster its claim that this Court has jurisdiction over respondent's inaction.

[61] G.R. No. 134114, July 6, 2001.

On the other hand, respondent claims that petitioner has not exhausted its administrative remedies before filing its *Petition* before this Court. Citing Section 7 of RA No. 9282, respondent states that only decisions of respondent Commissioner in cases involving liability for customs duties, fees, or other monetary charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Laws or other laws administered by the Bureau of Customs are within the scope of this Court's exclusive appellate jurisdiction.

Respondent states that the instant *Petition* appeals an alleged *inaction*, *not a decision*, on his part, and so petitioner has not exhausted its administrative remedies, which renders the petition *dismissible.*

We partly agree with respondent.

Under Sections 1106, 1107, and 1110 of RA No. 10863 or the CMTA, when a ruling or decision of the District Collector or customs officer involving, *inter alia*, other customs issues, the party adversely affected may appeal by way of a written protest against such ruling or decision before respondent, when payment has been made, or within fifteen (15) days thereafter:

> "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.
>
> 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." *(Emphases added)*
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> "SEC. 1110. *Decision in Protest.* — **When a protest is filed in proper form, the Commissioner shall render a decision within thirty (30) days from receipt of the protest**. In case the protest is sustained, in whole or in part, the appropriate order shall be made, and the entry reassessed, if necessary." *(Emphasis added)*

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As a corollary, Sections 7 and 11 of RA No. 1125,[62] as amended by RA No. 9282,[63] provides, in part, viz:

> "SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (2) **Inaction by the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action**, in which case the inaction shall be deemed a denial;
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> xxx xxx xxx
>
> (4) **Decisions of the Commissioner of Customs** in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;
>
> xxx xxx xxx
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or **inaction of the** xxx **Commissioner of Customs** xxx **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or <u>after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein</u>**.
>
> xxx xxx xxx." *(Emphases and underscoring added)*

It is clear from the foregoing provisions that this Court has exclusive appellate jurisdiction to review by appeal 1.) The **<u>decisions and inactions</u> of the Commissioner of Internal Revenue** involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue. 2.) The **<u>decisions</u> of respondent Commissioner of Customs** in cases involving liability for

[62] AN ACT CREATING THE COURT OF TAX APPEALS.

[63] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the BOC. Unlike in the case of the Commissioner of Internal Revenue, **nothing in the foregoing provisions states that an <u>inaction</u> by respondent** is appealable to this Court. Specifically, the law did not grant exclusive appellate jurisdiction to review by appeal cases involving or over *inaction* of respondent.

This is also reflected in Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended:

> "SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) **A party adversely affected by a decision, ruling or the <u>inaction of the Commissioner of Internal Revenue</u>** on disputed assessments or claims for refund of internal revenue taxes, or by **<u>a decision or ruling of the Commissioner of Customs</u>**, 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, **or expiration of the period fixed by law <u>for the Commissioner of Internal Revenue to act</u> on the disputed assessments.** In case of the inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year prescribed by law from payment or collection of the taxes.
>
> xxx xxx xxx
>
> SEC. 4. *Where to appeal; mode of appeal.* –
>
> (a) **An appeal from a decision or ruling or the <u>inaction of the Commissioner of Internal Revenue</u>** on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, **<u>the decision or ruling of the Commissioner of Customs</u>**, 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 as provided in Rule 42 of the Rules of Court.** The Court in Division shall act on the appeal." *(Emphases and underscoring added)*

As can be gleaned from the foregoing provisions and consistent with the above-quoted provisions of RA No. 1125, as amended, any inaction that was appealable to the Court referred to only to that of the Commissioner of Internal Revenue. There is **no provision to appeal the inaction of respondent.** Again, if at all, it is only the *"decisions of the Commissioner of Customs"*, which are appealable to this Court.

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In *Ace Publication, Inc. v. Commissioner of Customs*,[64] a case of *inaction* by the Collector of Customs and Commissioner of Customs, the Supreme Court *En Banc* held that the Court of Tax Appeals (CTA) had no jurisdiction over the case and affirmed the CTA resolution dismissing the taxpayer's petition:

> "xxx. The inaction compelled the petitioner to bring the matter to the attention of respondent Commissioner of Customs, in a letter dated May 27, 1960. In this letter petitioner asked for a review of the alleged erroneous and/or illegal assessments and collections and to authorize the refund thereof to petitioner. This letter, likewise, did not merit any attention from the Commissioner. So, that on February 9, 1961, petitioner presented with the Court of Tax Appeals (CTA), a Petition for Review containing six causes of action, all for the refund of the various amounts paid on different dates and alleging, as basis thereof, the following:
>
> > 'That the petitioner, being without any other administrative remedy aside from the steps it had already taken as herein before stated, and lest its right to claim refund might lapse before any action thereon is taken by respondent, is filing this petition for review pursuant to the provisions of Sec. 306 of the Internal Revenue Code and the ruling in the case of College of Oral and Dental Surgery vs. Court of Tax Appeals and Collector of Internal Revenue, G.R. No. L-10446, Jan. 28, 1958; 54 Off. Gaz. 7055.'
>
> Respondents, thru the Office of the Solicitor General, presented on March 2, 1961, a Motion (Ex-Parte) for Extension of Time to File an Answer, to expire on April 3, 1961. On the latter date, however, the Solicitor General presented a Motion to Dismiss instead. The Motion, although stamped by the CTA on April 3, 1961, was postmarked April 18, 1961, and received by petitioner herein on April 21, 1961, six (6) days after the scheduled hearing on April 15.
>
> The motion to dismiss was based on the lack of jurisdiction of the CTA to take cognizance of the petition for review, it appearing in the recitals that there was no decision by either the Collector or Commissioner of Customs which should be reviewed; for although there were formal requests for refund, both respondent officials failed to act thereon, one way or another. It was also intimated that even the former law governing the Board of Tax Appeals (forerunner of the CTA), which allowed review *motu proprio*, imposed as condition precedent that there be a decision first by the official concerned, without which there could be no review.
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> xxx xxx xxx
>
> That there is no decision or ruling by the Collector of Customs or Commissioner of Customs on the requests of appellant for refund, is abundantly clear from the very allegations in the petition. Pursuant, therefore, to the above ruling of this Court, the presentation of the Petition for Review with the CTA was premature, for as things stood then, there was nothing to review.
>
> We cannot, by mere analogy, apply the interpretation given to Sec. 306 of the Internal Rev. Code to Sec. 7, par. 2 of Rep. Act No. 1125. Not only was

[64] G.R. No. L-18808, May 29, 1964, 120 Phil 143-149.

> the petition directed against the Customs officials, but it also appears that Sec. 306 has no counterpart in the Tariff and Customs Code. There is no statutory grant for importers claiming refund of duties to go directly to the CTA, without waiting the decision of the Collector of Customs or Commissioner of Customs. For one thing, the Collector or Commissioner may order the refund of the taxes in question, in which event a review would not be necessary.
>
> Under appellant's second error, it claims that the CTA had no power to dismiss the petition for review *motu proprio*, citing Manila Herald Pub. Co., et al. vs. Ramos, et al., G.R. No. L-4258, Jan. 18, 1951. The facts and issues therein, however, are entirely different from the ones at bar. Moreover, it is provided that whenever it appears that the court has no jurisdiction over the subject-matter, it shall dismiss the action (Sec. 2, Rule 9, New Rules). Courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings (15 C. J. 852).
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> Having reached the above conclusions, the discussion of the last error becomes superfluous. There being want of jurisdiction, it matters not if the motion to dismiss was filed out of time or it was filed at all.
>
> WHEREFORE, the resolution sought to be reviewed is hereby affirmed, without special pronouncement as to costs." (*Underscoring supplied*)

In addition, it must be emphasized that while under the aforequoted Section 1110 of RA No. 10863, it is mandated that respondent *"render a decision within thirty (30) days from receipt of the protest"*, the same does *not* vest the Court with jurisdiction to entertain any inaction of respondent. Jurisdiction over respondent's inaction is not conferred by any law.

Apropos, jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy and **is conferred only by law** and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[65]

Moreover, under the maxim *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another thing not mentioned.[66] The rule of *expressio unius est exclusio alterius* is formulated in several ways. One variation of the rule is the principle that what is expressed puts an end to that which is implied. *Expressium facit cessare tacitum.* Thus, where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction,

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[65] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

[66] *Commissioner of Internal Revenue vs. Michel J. Lhuiller Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003.

be extended to other matters. The rule of *expressio unius est exclusio alterius* and its variations are canons of restrictive interpretation. They are based on the rules of logic and the natural workings of the human mind. They are predicated upon one's own voluntary act and not upon that of others. **They proceed from the premise that the legislature would not have made specified enumeration in statute had the intention been not to restrict its meaning and confine its terms to those expressly mentioned.** [67]

Petitioner's reliance on the *Nestle Philippines* case is also misplaced. While the Supreme Court held that "the failure or inaction of the latter to promptly perform his mandated duty under the Tariff and Customs Code should not be allowed to prejudice the right of the party adversely affected thereby", it should be noted that the case dealt with the exceptional circumstance of the Collector of Customs of Manila's inaction having gone on for a period of six (6) years, *viz*:

> "Accordingly, once a written protest is seasonably filed with the Collector of Customs the failure or inaction of the latter to promptly perform his mandated duty under the Tariff and Customs Code should not be allowed to prejudice the right of the party adversely affected thereby. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, *if any is proven*, and thereby enrich itself at the expense of the taxpayers. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, *if any*, of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.
>
> **Here, it is undisputed that the inaction of the Collector of Customs of Manila <u>for nearly six (6) years</u> on the protests seasonably filed by the petitioner has <u>caused the latter to immediately resort to the CTA</u>.** The petitioner did so on the mistaken belief that its claims are governed by the rule on quasi-contract or *solutio indebiti* which prescribes in six (6) years under Article 1145 of the New Civil Code." *(Emphasis and underscoring added)*

Such case, however, is exceptional and not the general rule. In *Addition Hills Mandaluyong Civic & Social Organization, Inc. vs. Megaworld Properties & Holdings, Inc., et al.*,[68] the Supreme Court reiterated the general rule and the exceptions to the doctrine of exhaustion of administrative remedies, *viz*:

> "**We have consistently declared that the doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.** The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.

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[67] *Malinias vs. The Commission on Elections, et al.*, G.R. No. 146943, October 4, 2002.
[68] G.R. No. 175039, April 18, 2012.

In the case of *Republic v. Lacap*, we expounded on the doctrine of exhaustion of administrative remedies and the related doctrine of primary jurisdiction in this wise:

> **The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.**
>
> Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.
>
> xxx xxx xxx
>
> Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. **There are many accepted exceptions**, such as: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) **where there is <u>unreasonable delay</u> or official inaction that will irretrievably prejudice the complainant**; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings." *(Emphases and underscoring added)*

In the present case, there is no showing that any of the exceptions as detailed above apply. While respondent failed to issue a decision within thirty (30) days, there is no showing that such delay is unreasonable, or that it will irretrievably prejudice the complainant. As in fact, respondent issued a decision on petitioner's *Protest* on August 20, 2019,[69] affirming the Resolution dated May

[69] Exhibit "R-8-3", BOC Records, pp. 11 to 24.

9, 2019 of the District Collector. It is this decision which petitioner should have elevated to this Court in a *Petition for Review*.

In fine, this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[70] Considering that the present case is *not* within the Court's jurisdiction, it must be dismissed.

ACCORDINGLY, premises considered, the present *Petition for Review* is **DISMISSED** on jurisdictional grounds.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest 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's Division.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice
Chairperson

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[70] *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 184266, November 11, 2013.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice