REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PTT PHILIPPINES TRADING CORPORATION ,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS and the COMMISSIONER OF INTERNAL REVENUE,
Respondents.

CTA CASE NO. 8023

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:
AUG 3 1 2010
ABFernandez 1:55 p.m.

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RESOLUTION

For resolution are the following:

1.) respondent Commissioner of Customs' "**Motion to Dismiss**" filed on April 7, 2010;

2.) petitioner's "**Comment/Opposition (Re: Commissioner of Customs' Motion to Dismiss)**" filed on May 19, 2010; and

3.) respondent Commissioner of Customs' "**Reply**" filed on June 1, 2010.

Respondent Commissioner of Customs seeks the dismissal of the instant petition on the grounds that the assailed letters demanding petitioner to pay the assessed duties, taxes and penalties conformably with the finding of the joint audit team had long become final and executory and that petitioner is guilty of forum shopping.

Respondent cites *Section* 9 of *Republic Act No, 9282*, to wit:

> "Section 9. Section 11 of the same act is hereby amended to read as follows:
>
> Section 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**. xxx" [1] (*Emphasis supplied.)*

Respondent points out that petitioner admitted in the instant petition that it received a copy of the assailed final demand letter dated November 7, 2007 on November 12, 2007. Petitioner filed the instant petition only on January 13, 2010, way beyond the reglementary period. Hence, the assailed final demand letter had become final and executory and this Court can no longer entertain the instant petition due to lack of jurisdiction

Respondent also avers that petitioner is guilty of forum shopping for having filed four petitions for review before this Court on November 20, 2007; September 30, 2009; December 1, 2009 and January 13, 2010 docketed as CTA Case Nos. 7707, 7981, 8002 and 8023 (the instant petition), respectively, and that the elements of *litis pendentia* are present. All the petitions are assailing the final demand letter dated November 7, 2007 demanding that petitioner settles the assessed

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[1] 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.

duties, taxes and penalties conformably with the findings of the joint audit team. The reliefs prayed for in the four (4) petitions are likewise identical and founded on the same facts.

Petitioner, counter-argues in its Comment/Opposition that:

> 1) on a matter of procedure, the instant motion must be expunged from the records. The filing of a motion to dismiss is not contemplated under the Rules of the Honorable Court. Further, even if the filing of a motion to dismiss is allowed under the rules, the filing of the instant motion is still procedurally defective since respondent COC had already filed an answer, which already referred to and discussed the ground relied upon in the motion;
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> 2) contrary to the supposition of respondent COC, the final demand letter dated 7 November 2007 cannot be deemed final and executory. The final assessment is, in fact, void since it failed to properly apprise petitioner of the details of the assessment, in violation of Section 228 of the 1997 Tax Code and the principles of administrative due process; and
>
> 3) the filing of the petition does not constitute forum shopping since not all the elements of *litis pendentia* are present herein. The rights asserted and the reliefs prayed for in this case are different from the petitions referred to by the respondent COC.

In his *Reply*, respondent contends that the Rules of this Court does not proscribe the filing of a motion to dismiss. It would be unfair, if not totally absurd, to require respondents to undergo a rigorous trial when it is evident that the petition is dismissible on its face on the ground that there are other actions between the same parties for the same cause and the assailed decision had long become final and executory.

Further, respondent avers that it is not true that the assailed final demand letter failed to apprise petitioner of the details of the assessment since the findings and conclusions of the audit team were fully explained to petitioner during the exit conference on July 12, 2007.

Finally, respondent insists that the elements of *litis pendentia* are present. The willful and deliberate filing of these four (4) petitions for review with this Court against respondent Commissioner of Customs assailing the same demand letter and praying for the same relief clearly constitutes gross abuse of this Court's processes, degrades the administration of justice and certainly congests this Court's dockets.

This Court finds respondent's *Motion to Dismiss* meritorious.

First, the assailed final demand letter had already become final and executory when petitioner filed the instant petition since petitioner admittedly received a copy of the final demand letter dated November 7, 2007 on November 12, 2007. However, it filed the instant Petition for Review only on January 13, 2010, way beyond the thirty-day reglementary period within which to file an appeal before this Court, as provided under the law.

Second, a Motion to Dismiss may be filed even after the filing of the answer and will not be considered filed out of time if the ground raised in the motion is either of the following:

(a) lack of jurisdiction over the subject matter;

(b) that there is another action pending between the same parties for the same cause; and

(c) that the action is barred by a prior judgment; or that the action is barred by the statute of limitations.[2]

On the issue of forum shopping, this Court agrees with respondent that petitioner is indeed guilty of forum shopping. There is forum shopping when, as a result of an adverse opinion in one forum, a party seeks favorable opinion, other than by appeal or *certiorari* in another. There can also be forum shopping when a party institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or grant the same or substantially the same reliefs on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action[3].

Forum shopping exists when the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that the judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case[4].

[2] Section 1, Rule 9, 1997 Rules Civil Procedure, as amended.
[3] Huibonhoa vs. Concepcion, G.R. No. 153785, August 3, 2006.
[4] Lim vs. Vianzon, G.R. No. 137187, August 3, 2006.

A comparison of CTA Case Nos. 7707, 7981, 8002, and 8023 shows the following:

	Parties	Nature of Petition	Reliefs Sought
CTA CASE NO. 7707	PTT Philippines Trading Corporation vs. Commissioner of Customs and the Subic Bay Metropolitan Authority (The Petition for Review against respondent Subic Bay Metropolitan Authority was dismissed in this Court's Resolution dated March 28, 2008.)	This is a Petition for Review filed under Section 7(a)(4) of R.A. No. 1125, as amended by R.A. No. 9282, in relation to Sections 2402 and 3611 of the Tariff and Customs Code, as amended, **assailing the November 7, 2007 Demand Letter of respondent Commissioner of Customs and the November 9, 2007 letter of respondent Subic Bay Metropolitan Authority.**	Judgment be rendered: (a) canceling and declaring null and void the assessment for and final demand for the payment of PhP4,236,530,193.00, of which said amount of PhP117,681,394.00 has been partially paid, leaving a net assessment of PhP4,118,848,799.00; (b) making permanent the temporary restraining order/writs of preliminary injunction against respondents; (c) directing respondent Commissioner to refund to petitioner the deposit of PhP117,681,394.00.
CTA CASE NO. 7981	PTT Philippines Trading Corporation vs. Commissioner of Customs	This is a Petition for Review filed under Section 7(a)(4) of R.A. No. 1125, as amended by R.A. No. 9282, in relation to Sections 2402 and 3611 of the Tariff and Customs Code, as amended, **assailing the November 7, 2007 Demand Letter of respondent Commissioner of Customs and the November 9, 2007 letter of respondent Subic Bay Metropolitan Authority** and claiming the refund to petitioner of the payment made under protest of PhP117,681,394.00.	Judgment be rendered directing respondent Commissioner to refund to petitioner the amount of Php117,681,394.00, representing the erroneously paid taxes and customs duties.

CTA CASE NO. 8002	PTT Philippines Trading Corporation vs. Commissioner of Customs and Commissioner of Internal Revenue	This is a Petition for Review filed under Section 7(a)(4) of R.A. No. 1125, as amended by R.A. No. 9282, in relation to Sections 2402 and 3611 of the Tariff and Customs Code, as amended, **assailing the November 7, 2007 Demand Letter of respondent Commissioner of Customs and the November 9, 2007 letter of respondent Subic Bay Metropolitan Authority** and claiming the refund to petitioner of the payment made under protest of PhP176,522,091.50.	Judgment be rendered directing respondent Commissioner to refund to petitioner the amount of Php176,522,091.50, representing the erroneously paid taxes and customs duties.
CTA CASE NO. 8023	PTT Philippines Trading Corporation vs. Commissioner of Customs and Commissioner of Internal Revenue	This is a Petition for Review filed under Section 7(a)(4) of R.A. No. 1125, as amended by R.A. No. 9282, in relation to Sections 2402 and 3611 of the Tariff and Customs Code, as amended, **assailing the November 7, 2007 Demand Letter of respondent Commissioner of Customs and the November 9, 2007 letter of respondent Subic Bay Metropolitan Authority** and claiming the refund to petitioner of the payment made under protest of PhP176,522,091.50.	Judgment be rendered directing respondent Commissioner to refund to petitioner the amount of Php176,522,091.50, representing the erroneously paid taxes and customs duties.

From the above comparison, this Court finds that all the three requisites constituting *res judicata* are present.

There is identity of parties as the four petitions involve PTT Philippines Trading Corporation as petitioner and Commissioner of Customs as respondent. Respondent Commissioner of Internal Revenue was merely impleaded as respondent in CTA Case Nos. 7707, 7981 and 8002, but there was no allegation that establishes petitioner's cause of action against him.

Also, the four petitions commonly assail the November 7, 2007 Demand Letter of respondent Commissioner of Customs and the November 9, 2007 Letter of Subic Bay Metropolitan Authority. In deciding whether to grant petitioner's prayers in each petition, this Court must determine whether the November 7, 2007 Demand Letter of respondent Commissioner of Customs is valid, and whether petitioner is liable to pay the deficiency duties and taxes.

Finally, petitioner raised five grounds in the four petitions, which are the same and similarly worded when compared. Hence, there is no doubt that whatever judgment this Court may render in one petition would, regardless of which party is successful, amounts to *res judicata* in the other.

WHEREFORE, premises considered, respondent Commissioner of Customs' **"Motion to Dismiss"** is hereby **GRANTED** and the instant *Petition for Review* is hereby **DISMISSED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice