Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

VERTEX INTERNATIONAL PRODUCT AND EXCHANGE CORPORATION, THROUGH ITS PRESIDENT RICARDO LUZ,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS, BUREAU OF CUSTOMS,
Respondent.

CTA EB Case No. 1160
(CTA Case No. 8193)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAR 04 2015
3:58 p.m.

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DECISION

CASANOVA, *J.*:

This is an appeal, by way of a Petition for Review[1], to nullify and set aside the Decision[2] dated February 4, 2014, which dismissed Vertex International Product and Exchange Corporation's petition on jurisdictional ground, and subsequent Resolution[3] dated April 1, 2014, which affirmed the said dismissal, both promulgated by the Court of Tax Appeal's (CTA) Third Division in CTA Case No. 8193.

Petitioner is a corporation duly registered and existing under laws of the Republic of the Philippines with principal place of business at Unit

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[1] CTA *En Banc* Rollo, pp. 1- 12
[2] Annex "D", Petition for Review, CTA *En Banc* Rollo, pp. 21-34
[3] Annex "E", *Ibid.,* pp. 36-40

14 568-A Quirino Highway, Barangay Talipapa, Novaliches, Quezon City.[4]

Respondent, on the other hand, is a government agency attached to the Department of Finance, with principal office at the Office of the Commissioner, Bureau of Customs, South Harbor, Manila.

The facts of the case,[5] as found by the CTA Third Division, are as follows:

> "Sapang Primary Multi-Purpose Cooperative (SPMC) is a grantee of a grains business license by the National Food Authority (NFA) and/or the Philippine International Trading Corporation (PITC).
>
> On January 22, 2008, SPMC executed a Deed of Assignment in favor of petitioner over the sacks of rice subject of this case.
>
> In March 2008, a shipment of seventeen thousand eight hundred (17,800) sacks of rice consigned to PITC for the account of SPMC arrived at the Port of Manila.
>
> After assessment by respondent, the dutiable value of the shipment was determined at Five Million Two Hundred Seventy-Four Thousand Two Hundred Ninety Pesos and Eight Centavos (P5,274,290.08). PITC paid for SPMC the amount of Two Million One Hundred Ten Thousand Seven Hundred Eighteen Pesos (P2,110,718.00) as duties and taxes with a tariff rate of forty percent (40%).
>
> On March 31, 2008, the operatives of the Presidential Anti-Smuggling Group (PASG), by virtue of Mission Order No. 0108-2008 served on Adonis Carmona, entered petitioner's warehouse at No. 10 Manhattan corner Seattle Streets, Cubao, Quezon City where they found 20,000 sacks of rice inside. Parked in front of the warehouse was a 1x20 container van (No. OOLU8235734).

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[4] The Parties, *Id.*, p. 1
[5] Annex "D", *Id.*, pp. 22-27

Per the documents submitted by the owner, the warehouse belonged to petitioner Vertex International Product and Exchange Corporation, with Ricardo Luz as its president and the rice found therein were imported by SPMC, to which a Certificate of Accreditation and Import License were respectively issued by the Customs Accreditation-Secretariat (CAS-BOC) and the NFA. The documents also showed that petitioner acquired the sacks of rice by virtue of a Deed of Assignment executed by SPMC in its favor.

On April 10, 2008, the District Collector of the Port of Manila issued a Warrant of Seizure and Detention against the subject shipment for alleged violation of Section 2530(f) and (1)(5) of the Tariff and Customs Code of the Philippines (TCCP), as amended, in relation to NFA rules and regulations.

On April 16, 2008, petitioner filed a Motion to Quash the Warrant of Seizure and Detention claiming, among others, that the ownership of subject shipment was lawfully transferred by SPMC to petitioner and that PASG has no authority from COC to seize the shipment pursuant to Section 2536 of the TCCP, as amended.

On April 22, 2008, the PASG filed its comment on the Motion to Quash raising the legality of the Deed of Assignment as the rights and privileges granted to SPMC cannot be assigned to a third party. Moreover, its authority to seize shipment is backed by Executive Order (E.O.) No. 624 and the deputation of the PASG Head to enforce the provisions of the TCCP, as amended issued by respondent.

On May 20, 2008, the District Collector of Port of Manila quashed the Warrant of Seizure and Detention in the Order dated April 10, 2008 and ordered the release of the 20,000 sacks of rice, more or less, found in the warehouse located at No. 10 Manhattan corner Seattle Streets, Cubao, Quezon City, pursuant to Section 2313 of the TCCP, as amended.

period herein prescribed, the same shall be deemed dismissed.

If in any seizure proceedings, the Collector renders a decision adverse to the Government, such decision shall be automatically reviewed by the Commissioner and the records of the case elevated within five (5) days from the promulgation of the decision of the Collector. The Commissioner shall render a decision of the automatic appeal within thirty (30) days from receipt of the records of the case. **If the Collector's decision is reversed by the Commissioner, the decision of the Commissioner shall be final and executory**. However, if the Collector's decision is affirmed, or if within thirty (30) days from receipt of the records of the case by the Commissioner no decision is rendered or the decision involves imported articles whose published value is Five million pesos (P5,000,000) or more, such decision shall be deemed automatically appealed to the Secretary of Finance and the records of the proceedings shall be elevated within five (5) days from the promulgation of the decision of the Commissioner or of the Collector under appeal, as the case may be: Provided, further, That if the decision of the Commissioner or of the Collector under appeal, as the case may be, is affirmed by the Secretary of Finance, or if within thirty (30) days from receipt of the records of the proceedings by the Secretary of Finance, no decision is rendered, the decision of the Secretary of Finance, or of the Commissioner, or of the Collector under appeal, as the case may be, shall become final and executory.

In any seizure proceeding, the release of imported articles shall not be allowed unless and until a decision of the Collector has been confirmed in writing by the Commissioner of Customs."

"**Sec. 2402. Review by Court of Tax Appeals.** — The party aggrieved by a ruling of the Commissioner in any matter brought before him upon protest or **by his action or ruling in any case of seizure may appeal to the Court of Tax Appeals**, in the manner and within the period prescribed by law and regulations.

> Decision is not in accordance with the evidence presented and is contrary to law and procedures; that the subject shipment did not violate Section 2530 (f) and (l) of the Customs Code; that all the requirements for importation were complied with by importer Sapang Palay Multi Purpose Cooperative; that said importer filed the corresponding Import Entry and paid the corresponding duties and taxes thereon; that the transfer of ownership on the said importation to herein claimant is an exercise by Sapang Palay Multi Purpose Cooperative of its right as legitimate owner thereof; that granting without admitting that it is in violation of NFA rules and regulations, the same is not within the jurisdiction of the Bureau of Customs; and that, as such, the said Decision should be reversed and set aside. Hence this Review." *(Emphasis and Underscoring Ours)*

Admittedly, petitioner submitted that it received respondent's January 7, 2010 Decision on January 17, 2010. Clearly, petitioner was then provided sufficient notice of the outcome of the said case.

However, thereafter, in its appeal, petitioner assails the authority of its broker, asserting that "no authority to do so was given by petitioner"[25], thus, it was deprived of due process.

Again, *We* are not convinced.

The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[26]

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[25] Par. 8, Petition for Review, Division Docket, p. 5; and Par. 6, Memorandum, Division Docket, p. 307

[26] Haydee Casimiro vs. Filipino Tandog, G.R. No. 146137, June 08, 2005

In the administrative hearing for S. IDN. No. 2008-060[27] conducted on April 16, 2008, the hearing officer, Atty. Roberto Bauson, inquired the authority of Mr. Adones C. Carmona to represent petitioner, thus:

"x x x

HEARING OFFICER:

xxx xxx xxx

Before going further, I would like to ask Mr. Carmona if he has an authority to appear in behalf of Ricky Luz/Vertex?

MR. CARMONA:

Yes, Your Honor.

HEARING OFFICER:

What kind of Authority?

MR. CARMONA:

Special Power of Attorney.

HEARING OFFICER:

Atty. Llagas, could you go over said document and tell us your comment?

ATTY. LLAGAS:

I have no objection with the SPA submitted which states that Mr. Adonis Carmona is the representative of Ricky Luz/Vertex International Product Exchange Corp.

x x x."

[27] Exhibit "1" for the respondent

Evidently, the records of the case reveal that petitioner was aware of the January 7, 2010 Decision rendered by respondent. Therefore, *We* cannot give credence to petitioner's claim that it was deprived of due process. Suffice it so to say that if petitioner, indeed, was unaware of said proceedings or if the Mr. Adones C. Carmona really has no authority to represent petitioner, it should have presented evidence in addition to those already presented during its administrative appeal considering that the proceedings before the Court *a quo* was a trial *de novo*[28]. Mere allegation is not proof.[29] It must be pointed out that in the exercise of its exclusive appellate jurisdiction over the decisions of the Commissioner of Customs in cases involving seizure, detention or release of property affected, the Court in Division must necessarily review and evaluate the pieces of evidence presented at the administrative level.[30]

Moreover, it is worthy to note that there is nothing in Section 2313 of Book II of RA No. 1937, as amended, which would support petitioner's contention that failure of respondent to decide the automatic appeal within thirty (30) days from receipt of records will render his decision thereafter null and void. What is clear from the provision is that in case the Customs Commissioner fails to decide within the prescribed period, the case is deemed automatically appealed to the Secretary of Finance.[31]

Thus, recalling that the reckoning point of a judicial appeal shall be from the receipt of respondent's Decision, petitioner only has until February 16, 2010 within which to file its judicial appeal.

In view of the foregoing, this Court cannot disregard jurisdictional conditions mandated by law; non-compliance with mandatory prescriptive periods **bars** a taxpayer's claim for tax refund or credit. This Court should not establish the precedent that non-compliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements, and will open the flood gates for unscrupulous claims.

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[28] Kepco Phil. Corp. vs. CIR, G.R. No. 179356, December 14, 2009
[29] Malayan Insurance vs. Philippines First Insurance, G.R. No. 184300, July 11, 2012
[30] *See* El Greco Ship Manning and Management Corporation, vs. Commissioner of Customs, G.R. No. 177188, December 4, 2008
[31] *Ibid.*

Having thus concluded, the Court *En Banc* finds it unnecessary to determine the merit of the other issues raised in the instant Petition in view of the finding that respondent's Decision dated January 7, 2010 has already become final and executory.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated February 4, 2014 and Resolution dated April 1, 2014, both rendered by the CTA Third Division in CTA Case No. 8193, are **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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 with the members of the Court *En banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice