REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

PTT PHILIPPINES TRADING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS,
Respondent.

CTA EB CASE NO. 711
(CTA Case No. 7707)

x - x

PTT PHILIPPINES TRADING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS and COMMISSIONER OF INTERNAL REVENUE,
Respondents.

CTA EB CASE NO. 714
(CTA Case No. 8002)

x- -x

PTT PHILIPPINES TRADING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS and COMMISSIONER OF INTERNAL REVENUE,
Respondents.

CTA EB CASE NO. 719
(CTA Case No. 8023)

Present:
Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
APR 17 2012
4:20 pm

x--x

RESOLUTION

Considering that respondent Commissioner of Customs and petitioner have already filed their respective Consolidated Memoranda, on October 5, 2011, and October 20, 2011, respectively, and for failure of respondent Commissioner of Internal Revenue to file her consolidated memoranda within the period granted, the Court *En Banc* hereby resolves as follows.

The Petitions for Review filed by petitioner PTT Philippines Trading Corporation on: (1) January 10, 2011, docketed as CTA EB Case No. 711;[1] (2) January 24, 2011, docketed as CTA EB Case No. 714;[2] and (3) February 11, 2011, docketed as CTA EB Case No. 719,[3] pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282 and Republic Act No. 9503, pray for the following:

CTA EB Case No. 711

1) REVERSE and SET ASIDE the Resolutions promulgated by the Second Division [of the Court] on August 26, 2010,[4] and December 8, 2010,[5] and REINSTATE CTA Case No. 7707; and

2) DIRECT and ALLOW the consolidation of CTA Case No. 7707, with CTA Case Nos. 7981, 8002, and 8023, subject to the agreement of the appropriate Divisions of the Court.

CTA EB Case No. 714

1) REVERSE and SET ASIDE the Resolutions promulgated by the First Division [of the Court] on July 13, 2010,[6] and December 16, 2010,[7] and REINSTATE CTA Case No. 8002 and that the same be given due course; and

[1] *Rollo*, CTA EB Case No. 711 (CTA Case No. 7707), pp. 6-372, with Annexes.
[2] *Ibid.*, CTA EB Case No. 714 (CTA Case No. 8002), pp. 7-336, with Annexes.
[3] *Ibid.*, CTA EB Case No. 719 (CTA Case No. 8023), pp. 7-241, with Annexes.
[4] *Ibid.*, CTA EB Case No. 711 (CTA Case No. 7707), pp. 35-39; *Annex "A."*
[5] *Ibid.*, pp. 40-42; *Annex "B."*
[6] *Ibid.*, CTA EB Case No. 714 (CTA Case No. 8002), pp. 39-51; *Annex "A."*
[7] *Ibid.*, pp. 52-64; *Annex "B."*

2) DIRECT and ALLOW the consolidation of CTA Case No. 8002, with CTA Case Nos. 7707, 7981, and 8023, subject to the agreement of the appropriate Divisions of the Court.

CTA EB Case No. 719

1) REVERSE and SET ASIDE the August 31, 2010,[8] and January 10, 2011,[9] Resolutions [of the Third Division of the Court] and REINSTATE CTA Case No. 8023; and

2) DIRECT and ALLOW the consolidation of CTA Case No. 8023, with CTA Case Nos. 7707, 7981, and 8002, subject to the agreement of the appropriate Divisions of the Court.

Based on the records of the case, petitioner, PTT Philippines Trading Corporation, is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at Subic Bay Freeport Zone, Philippines. It is registered with the Subic Bay Metropolitan Authority. It is primarily engaged in the business of petroleum products terminalling, storage, distribution and pipeline operations from Subic Bay to Clark Special Economic Zone and subleasing activity.

Respondent, Commissioner of Customs ("COC") is the head of the Bureau of Customs ("BOC"), a government agency under the Department of Finance, principally tasked with the enforcement of the customs laws of the Philippines.

And respondent, Commissioner of Internal Revenue ("CIR") is the head of the Bureau of Internal Revenue ("BIR"), the government agency tasked with the enforcement of revenue laws and collection of internal revenue taxes.

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[8] *Ibid.*, CTA EB Case No. 719 (CTA Case No. 8023), pp. 46-53; *Annex "A."*
[9] *Ibid.*, pp. 54-57; *Annex "B."*

On November 23, 2006, respondent COC[10] issued Mission Order No. 018-2006, creating a Special Audit Team tasked to conduct a joint full audit, together with the appropriate office/unit of Subic Bay Metropolitan Authority ("SBMA"), relative to all import shipments and inventory of all sale transactions of petitioner.

On November 28, 2006, the Administrator and Chief Executive Officer of SBMA,[11] issued a Letter of Authority, pursuant to Section 59 of the Subic Bay Freeport Zone Rules,[12] Chapter II(B) of Customs Administrative Order No. 4-93,[13] creating a joint audit team composed of SBMA and BOC personnel for the conduct of post entry audit of all importations, inventory and sales transactions of petitioner.

On July 2, 2007, the Joint Audit Team issued its initial audit findings recommending for the assessment of duties, taxes and penalties in the total amount of ₱4,236,530,193.00 against petitioner, which the latter received on July 12, 2007. The amount of ₱470,725,577.00 corresponds to the assessed duties and taxes, while the remaining ₱3,765,804,616.00 corresponds to the penalties imposed thereto.

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[10] Napoleon L. Morales.

[11] Armand C. Arreza.

[12] SECTION 59. *Bookkeeping and Reportorial Requirements.* – All SBF Enterprises shall keep regular and accurate records of their transactions, and maintain books of accounts and allied documents in accordance with the bookkeeping rules and regulations prescribed by the Bureau of Internal Revenue and/or the SBMA, which shall be open to inspection and verification by authorized officers of the SBMA or of the Bureau of Internal Revenue and the Bureau of Customs, upon prior notification and coordination with the SBMA. For this purpose, the SBMA at its instance, or jointly with the Bureau of Internal Revenue and/or the Bureau of Customs, is authorized to conduct at any time during office hours any audit, check, or inventory count for the verification and reconciliation of the records with the inventory of articles in the SBF.

For the effective implementation of the Act, the provisions of Title IX on the Requirements of Keeping Books of Accounts and Records, Title X on Statutory Penalties and Offenses, both of the National Internal Revenue Code, as amended, as well as their implementing rules and regulations, shall apply to all SBF Enterprises.

[13] Rules and Regulations for Customs Operations in the Subic Special Economic and Freeport Zone.

On July 24, 2007, petitioner, through counsel, issued a letter to controvert the findings of the BOC and SBMA Joint Audit Team and for the reconsideration of the latter's recommendations.

On July 31, 2007, respondent COC issued a letter demanding for the payment, within seven (7) days from receipt thereof, of the total amount of ₱4,236,530,193.00. The said demand letter was received by petitioner on August 2, 2007.

On August 3, 2007, petitioner sent a letter to COC, requesting for a reconsideration or reinvestigation of the SBMA-BOC Joint Audit Team's conclusion and recommendation.

On October 1, 2007, petitioner paid under protest the amount of ₱117,681,394.00, which was duly acknowledged by respondent COC in his letter of even date.

However, on November 7, 2007, respondent COC issued a Demand Letter, demanding in full, the amounts of ₱470,725,577.00 pertaining to the basic assessed duties and taxes, and ₱3,765,804,616.00 pertaining to the penalties thereof, until November 15, 2007.

On November 9, 2007, respondent SBMA issued a letter, demanding for the settlement of the alleged deficiency assessments with the BOC on or before November 15, 2007, otherwise, it shall automatically suspend the Certificate of Registration and Tax Exemption of the petitioner.

On November 13, 2007, petitioner issued a letter to respondent SBMA, requesting for reconsideration thereof.

On November 14, 2007, petitioner sent a letter to the Secretary Margarito Teves of the Department of Finance.

On November 15, 2007, respondent SBMA issued a letter, suspending petitioner's operations within the Subic Bay Freeport Zone, effective November 16, 2007, until three (3) months or until the obligations have been settled with the BOC.

On November 28, 2007, petitioner entered into an agreement with respondent COC, acceding to pay under protest the balance of the principal assessment amounting to ₱353,044,183.00 in two (2) equal installments on November 29, 2007 and December 15, 2007.

On November 29, 2007, petitioner paid under protest the amount of ₱176,522,091.50, as evidenced by Official Receipt No. 144759386. While on December 18, 2007, petitioner paid under protest the amount of ₱176,522,091.50, as evidenced by Official Receipt No. 0227227.

CTA Case No. 7707

On November 20, 2007, petitioner filed a Petition for Review [Re: 7 November 2007 Final Demand Letter of the Commissioner of Customs and 15 November 2007 Letter of the Subic Bay Metropolitan Authority] With Urgent Application for the Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Prohibitory Injunction and a Writ of Preliminary Mandatory Injunction,[14] raffled to the Second Division of this Court,[15] docketed as CTA Case No. 7707, praying among

[14] *Records*, CTA Case No. 7707, pp. 1-372, with Annexes.
[15] The Second Division before CTA Administrative Circular No. 01-2010, "Implementing the Fully Expanded Membership in the Court of Tax Appeals," took effect on January 5, 2010.

others: (1) the cancellation of the assessment in the amount of ₱4,236,530,193.00, of which the amount of ₱117,681,394.00 has been paid; and (2) the refund of the amount of ₱117,681,394.00.

On March 28, 2008, the Second Division of the Court promulgated a Resolution finding merit on respondent SBMA's Motion to Dismiss. Thus, the Petition for Review was dismissed insofar as against respondent SBMA.[16]

On June 5, 2008, respondent COC filed his Answer.[17] However, on September 22, 2009, respondent COC filed a Motion for Leave to File and Admit Attached Amended Answer,[18] with her attached Amended Answer,[19] interposing that petitioner is guilty of intentional misdeclaration of the subject shipment to evade payment of correct duties and taxes.

On April 15, 2010, the Second Division of the Court resolving the Motion to Dismiss filed by the respondent COC, with the Opposition to Motion to Dismiss (Filed by Respondent Commissioner of Customs) filed by petitioner, denied the same.[20]

However, on August 26, 2010, the Second Division of the Court ruled in favor of respondent COC upon its Motion for Reconsideration. Accordingly, the Second Division of the Court ordered for the dismissal of the case.[21] Petitioner's Motion for Reconsideration was denied in a Resolution dated December 8, 2010.[22]

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[16] *Records*, CTA Case No. 7707, pp. 446-449
[17] *Id.*, at pp. 482-493.
[18] *Id.*, at pp. 1611-1616.
[19] *Id.*, at pp. 1617-1683, with Annexes.
[20] *Id.*, at pp. 1889-1893.
[21] *Id.*, at pp. 1961-1965.
[22] *Id.*, at pp. 2022-2024.

Thus, on January 10, 2011, petitioner filed a Petition for Review before the Court *En Banc*, docketed as ***CTA EB Case No. 711***.

CTA Case No. 7981

On September 30, 2009, petitioner filed a Petition for Review, raffled to the Third Division of the Court, docketed as CTA Case No. 7981, praying for the refund of the amount of ₱117,681,394.00, representing erroneously paid taxes and customs duties.[23]

On December 17, 2009, respondent COC filed her Comment/Answer,[24] arguing, *inter alia*: (1) the assailed letters demanding for the payment of the assessed duties, taxes and penalties had long become final and executory; and (2) petitioner is guilty of forum shopping.

On July 4, 2011, the Third Division of the Court resolving the Motion to Dismiss filed by respondent COC, with the Opposition to Motion to Dismiss (Filed by Respondent Commissioner of Customs) filed by petitioner, ruled that the latter is guilty of forum shopping.[25] Thus, the Petition for Review was dismissed.

CTA Case No. 8002

On December 1, 2009, petitioner filed a Petition for Review, raffled to the First Division of the Court, docketed as CTA Case No. 8002, praying for the refund of the

[23] *Records*, CTA Case No. 7981, pp. 1-82, with Annexes.
[24] *Id.*, at pp. 91-207, with Annexes.
[25] *Id.*, at pp. 494-500.

amount of ₱176,522,091.50, representing erroneously paid taxes and customs duties.[26]

On January 15, 2010, respondent CIR filed a Motion to Admit Attached Answer,[27] with her attached Answer.[28]

On February 12, 2010, respondent COC filed her Comment/Answer,[29] alleging as follows: (1) that the assailed letters demanding for the payment of the assessed duties, taxes and penalties had long become final and executory; and (2) that petitioner is guilty of forum shopping.

On July 13, 2010, the First Division of the Court granted the Motion to Dismiss filed by respondent COC on the ground of lack of jurisdiction.[30]

Thus, on January 24, 2011, petitioner filed a Petition for Review before the Court *En Banc*, docketed as ***CTA EB Case No. 714***.

CTA Case No. 8023

On December 17, 2009, petitioner filed a Petition for Review, raffled to the Third Division of the Court, docketed as CTA Case No. 8023, praying for the refund of the amount of ₱176,522,091.50, representing erroneously paid taxes and customs duties.[31]

[26] *Records*, CTA Case No. 8002, pp. 1-104, with Annexes.
[27] *Id.*, at pp. 112-119.
[28] *Id.*, at pp. 120-126.
[29] *Id.*, at pp. 147-303, with Annexes.
[30] *Id.*, at pp. 423-434.
[31] *Records*, CTA Case No. 8023, pp. 1-118, with Annexes.

On March 11, 2010, respondent COC filed his Comment/Answer,[32] interposing among others: (1) that the assailed letters demanding for the payment of the assessed duties, taxes and penalties had long become final and executory; and (2) petitioner is guilty of forum shopping.

On March 15, 2010, respondent CIR filed her Answer.[33]

On August 31, 2010, the Third Division of the Court resolving the Motion to Dismiss filed by respondent COC, with the Comment/Opposition (Re: Commissioner of Customs' Motion to Dismiss) filed by petitioner, and Reply thereto by the former, ruled the presence of *res judicata*, and accordingly, dismissed the Petition for Review.[34]

Thus, on February 11, 2011, petitioner filed a Petition for Review before the Court *En Banc*, docketed as *CTA EB Case No. 719*.

CTA EB Case Nos. 711, 714 and 719

After considering the factual milieu of the cases at bench, the Court *En Banc* resolves to remand the cases to the Court sitting in Division for further trial.

By forum shopping, a party initiates two or more actions in separate tribunals, grounded on the same cause, trusting that one or the other tribunal would favorably dispose of the matter.[35] The elements of forum shopping are the same as in *litis pendentia* where the final judgment in one case will amount to *res judicata* in the

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[32] *Id.*, at pp. 143-377, with Annexes.
[33] *Id.*, at pp. 340-350.
[34] *Id.*, at pp. 444-451.
[35] Chavez *v.* Court of Appeals, G.R. No. 174356, January 20, 2010, *citing Philippine National Construction Corporation v. Dy, G.R. No. 156887, October 3, 2005, 472 SCRA 1, 6.*

other. The elements of forum shopping are: (1) identity of parties, or at least such parties as would represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[36]

To illustrate the above-mentioned cases:

CTA CASE NO.	TITLE (PARTIES TO THE CASE)	PRAYER/S
7707 *(now CTA EB No. 711)*	PTT Philippines Trading Corporation *v.* Commissioner of Customs and the Subic Bay Metropolitan Authority	Cancellation of the assessment and refund of the amount of ₱117,681,394.00, which was paid on October 1, 2007.
7981	PTT Philippines Trading Corporation *v.* Commissioner of Customs	Refund of the amount of ₱117,681,394.00, which was paid on October 1, 2007.
8002 *(now CTA EB No. 714)*	PTT Philippines Trading Corporation *v.* Commissioner of Customs and Commissioner of Internal Revenue	Refund of the amount of ₱176,522,091.50, which was paid on November 29, 2007.
8023 *(now CTA EB No. 719)*	PTT Philippines Trading Corporation *v.* Commissioner of Customs and Commissioner of Internal Revenue	Refund of the amount of ₱176,522,091.50, which was paid on December 18, 2007.

Readily apparent from the above discussions and table that the afore-mentioned cases stemmed from the same facts, which resulted to the presence of identity of parties.

However, the same set of facts brings about several ensuing circumstances which involve different causes of action and consequent reliefs.

In **CTA Case No. 7707** ***(now CTA EB Case No. 711)***, petitioner sought to nullify the following: (1) the November 7, 2007 Demand Letter, demanding in full, the amounts of ₱470,725,577.00 pertaining to basic assessed duties and taxes, and

[36] *Ibid., citing Cruz v. Caraos, G.R. No. 138208, April 23, 2007, 521 SCRA 510, 522.*

₱3,765,804,616.00 pertaining to penalties thereof, despite its payment on October 1, 2007, of the amount of ₱117,681,394.00, which was duly acknowledged by respondent COC in his letter of even date; (2) the November 9, 2007 Letter, issued by respondent SBMA, demanding for the settlement of the alleged deficiency assessments; (3) the November 15, 2007 Letter, issued by the respondent SBMA, suspending petitioner's operations within the Subic Bay Freeport Zone; and (4) the consequent refund of the amount of ₱117,681,394.00.

CTA Case No. 7707 is filed pursuant to Section 7(a)(4) of Republic Act (RA) No. 1125, as amended by RA 9282 and 9503,[37] in relation to Sections 2402[38] and 3611[39] of the Tariff and Customs Code of the Philippines.

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[37] (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.

[38] SECTION 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.

Unless an appeal is made to the Court of Tax Appeals in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive.

[39] SECTION 3611. *Failure to Pay Correct Duties and Taxes on Imported Goods.* – Any person who, after being subjected to post-entry audit and examination as provided in Section 3515 of Part 2, Title VII hereof, is found to have incurred deficiencies in duties and taxes paid for imported goods, shall be penalized according to three (3) degrees of culpability subject to any mitigating, aggravating or extraordinary factors that are clearly established by the available evidence:

(a) Negligence – When a deficiency results from an offender's failure, through an act or acts of omission or commission, to exercise reasonable care and competence to ensure that a statement made is correct, it shall be determined to be negligent and punishable by a fine equivalent to not less than one-half (1/2) but not more than two (2) times the revenue loss.

(b) Gross Negligence – When a deficiency results from an act or acts of omission or commission done with actual knowledge or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligation under the statute, it shall be determined to be grossly negligent and punishable by a fine equivalent to not less than two and a half (2 1/2) but not more than four(4) times the revenue loss.

(c) Fraud – When the material false statement or act in connection with the transaction was committed or omitted knowingly, voluntarily and intentionally, as established by clear and convincing evidence, it shall be determined to be fraudulent and be punishable by a fine equivalent to not less than five (5) times but not more than eight (8) times the revenue loss and imprisonment of not less than two (2) years but not more than eight (8) years.

The decision of the Commissioner of Customs, upon proper hearing, to impose penalties as prescribed in this Section may be appealed in accordance with Section 2402 hereof.

Thus, the filing of the Petition for Review on November 20, 2007 by petitioner tolled the period within which the subject assessment shall become final and conclusive.

On the other hand, **CTA Case No. 7981**, seeks for the refund of the amount of ₱117,681,394.00, which was paid on October 1, 2007. The case was filed pursuant to Section 7(a)(4) of RA No. 1125, as amended by RA 9282 and 9503, in relation to Section 229 of the 1997 National Internal Revenue Code ("NIRC"), as amended.[40]

While **CTA Case No. 7707** and **CTA Case No. 7981** sought for the refund of the same amount of ₱117,681,394.00, which was paid on October 1, 2007, the case of *Dotmatrix Trading, as represented by its proprietors namely, Romy Yap Chua, Renato Rollan and Rolando Cadiz v. Rommel Legazpi, under the name and style of Big J Farms and RBL Farm,*[41] enunciated by the Supreme Court is instructive, to quote:

> We take this opportunity to revisit the cases we have decided on the issue of *litis pendentia* and the factors we considered in determining which case should prevail and which must yield to the other.
>
> xx xxx xxx
>
> Early on, we applied the principle of *Qui prior est tempore, potior est jure* (literally, *he who is before in time is better in right*) in dismissing a case on the ground of *litis pendentia.* xxx.

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[40] Section 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[41] G.R. No. 155622, October 26, 2009.

xxx xxx xxx

> The "more appropriate action test" considers the real issue raised by the pleadings and the ultimate objective of the parties; the more appropriate action is the one where the real issues raised can be fully and completely settled. xxx.
>
> In the "anticipatory test," the *bona fides* or good faith of the parties is the critical element. If the first suit is filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal, then the first suit should be dismissed. xxx.

Applying the foregoing jurisprudence, **CTA Case No. 7707** is the main action to resolve the issue between the parties, *i.e.*, whether or not the subject assessment is valid.

To dismiss both **CTA Case No. 7707** and **CTA Case No. 7981**, would necessarily result to a delay in the resolution of the parties' dispute and bring them back to square one.[42]

And since as earlier discussed that the filing of the Petition for Review on November 20, 2007 had effectively tolled the period within which the subject assessment shall become final and conclusive, **CTA Case No. 8002 (*now CTA EB Case No. 714*)** and **CTA Case No. 8023 (*now CTA EB Case No. 719*)** filed on December 1, 2009 and December 17, 2009, respectively, were instituted merely to claim for refund of the subsequent amounts paid as follows: (1) ₱176,522,091.50, evidenced by Official Receipt No. 144759386 paid on November 29, 2007, and (2) ₱176,522,091.50, evidenced by Official Receipt No. 0227227, paid on December 18, 2007.

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[42] *Ibid.*

Therefore, petitioner merely seeks the refund of different amounts paid on different dates as indicated in the official receipts. **CTA Case No. 8002** and **CTA Case No. 8023**, now before the Court *En Banc* as **CTA EB Case No. 714** and **CTA EB Case No. 719**, respectively, are mere supplements to the main action.

And to dismiss **CTA Case No. 7707, CTA Case No. 7981, CTA Case No. 8002** and **CTA Case No. 8023**, merely on the grounds discussed earlier, would bring the parties' dispute to square one.

Under the foregoing, **CTA Case No. 7707, CTA Case No. 8002,** and **CTA Case No. 8023**, now before the Court *En Banc* consolidated as **CTA EB Case No. 711, CTA EB Case No. 714,** and **CTA EB Case No. 719**, respectively, should be given due course, and let the parties ventilate their claims in a full blown trial.

And since the majority of the abovementioned cases were raffled to the Third Division of the Court, let the same be remanded and consolidated to the said Division for further proceedings.

WHEREFORE, the Court *En Banc* hereby **ORDERS** for the **REVERSAL** and **SETTING ASIDE** of the following:

a. The Resolutions promulgated by the Second Division of the Court on August 26, 2010, and December 8, 2010 in CTA Case No. 7707;

b. The Resolutions promulgated by the First Division of the Court on July 13, 2010, and December 16, 2010 in CTA Case No. 8002; and

c. The Resolutions promulgated by the Third Division of the Court on August 31, 2010, and January 10, 2011 in CTA Case No. 8023.

Accordingly, to **REINSTATE** the Petitions for Review in **CTA Case No. 7707, CTA Case No. 8002, and CTA Case No. 8023**. Therefore, the Court *En Banc*

ORDERS for the **REMAND** of the said cases to the Third Division of this Court. **CTA Case Nos. 7707, 8002 and 8023** are to be **CONSOLIDATED** and tried accordingly.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

See dissenting opinion
Juanito C. Castaneda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

I concur w/ the dissenting opinion of Justice Castañeda, Jr.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

See attached Concurring + Dissenting opinion

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

I concur with Justice Castañeda.
Cielito N. Mindaro Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PTT PHILIPPINES TRADING CORPORATION, Petitioner,

-versus-

COMMISSIONER OF CUSTOMS, Respondent.

CTA EB NO. 711
(CTA Case No. 7707)

x---x

PTT PHILIPPINES TRADING CORPORATION, Petitioner,

-versus-

COMMISSIONER OF CUSTOMS and COMMISSIONER OF INTERNAL REVENUE, Respondents.

CTA EB NO. 714
(CTA Case No. 8002)

x---x

PTT PHILIPPINES TRADING CORPORATION, Petitioner,

-versus-

COMMISSIONER OF CUSTOMS and COMMISSIONER OF INTERNAL REVENUE, Respondents.

CTA EB NO. 719
(CTA Case No. 8023)

Present:
Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
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Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:
APR 17 2012

x--x

DISSENTING OPINION

CASTAÑEDA, JR., *J.*:

I respectfully disagree with the majority opinion and vote to AFFIRM the assailed Resolutions dismissing CTA Case Nos. 7707, 8002 & 8023. This is based on the following reasons, to wit:

1. There was forum shopping;
2. The Petitions for Review on CTA Case Nos. 8002 & 8023 were filed out of time; and
3. The disposition of the present consolidated *en banc* cases should have been contained in a "Decision" and not in a mere "Resolution."

There was forum shopping.

The elements of forum shopping were present in the Petitions for Review docketed as CTA Case Nos. 7707, 8002 & 8023 because **these cases commonly assailed the November 7, 2007 Demand Letter issued by the Commissioner of Customs (COC)** demanding in full, the amounts of P470,725,577.00 pertaining to the basic assessed duties and taxes, and P3,765,804,616.00 pertaining to the penalties thereof for a total of 4,236,530,193.00.

In the case of *Asia United Bank, Christine T. Chan, and Florante C. Del Mundo vs. Goodland Company, Inc.*,[1] the Supreme Court demonstrated the consequence of forum shopping when it dismissed both cases founded on the same transactions, same essential facts and circumstances, and raise

[1] G.R. No. 191388, March 9, 2011, 645 SCRA 205.

substantially the same issues. There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court."[2] There is still forum shopping even if the reliefs prayed for in the two cases are different, so long as both cases raise substantially the same issues.[3] Indeed, "the costly consequence of forum shopping should remind the parties to ever be mindful against abusing court processes."[4]

In this case, petitioner's admission in its Certification and Verification Against Forum Shopping the pendency of the other cases will not remove the petitions from the effects of *res judicata* or *litis pendentia*.[5] These doctrines may not be avoided by varying the form of the action or adopting a different mode of presenting one's case.[6]

Although CTA Case No. 7707 was the first case instituted, it was dismissed based solely on forum shopping. If at all, the remedy of the petitioner is with CTA Case No. 7981 which was found to be the "more appropriate action" as it already concluded the pre-trial conference and was about to start the initial presentation of petitioner's evidence. There can be deviation from priority–in-

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[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*
[5] *Paradero vs. Abragan*, G.R. No. 158917, March 1, 2004, 424 SCRA 155, 163.
[6] *Ibid.*

time rule when we apply the "more appropriate action test."[7] However, CTA Third Division eventually dismissed CTA Case No. 7981 due to belated filing of the petition and forum shopping.

The Petitions for Review on CTA Case Nos. 8002 & 8023 were filed out of time.

For CTA Case No. 8002 (CTA EB No. 714), the CTA First Division dismissed the petition for lack of jurisdiction in the assailed Resolution[8] dated July 13, 2010. The court said that the petition was filed out of time, it explained:

> "There is no pretension as to petitioner's receipt of the assailed Demand Letter on November 12, 2007. Thus, it had only until December 12, 2007, to seek relief from this Court. **But it took nearly two years for petitioner to elevate its case divesting this Court of the authority to act on the appeal. Petitioner's failure to perfect an appeal within the reglementary period is not a mere techinicality as it raises a jurisdictional problem which deprives the appellate court of jurisdiction over the appeal.** Note that a demand letter for payment of delinquent taxes may be considered a decision on the disputed or protested assessment. Unequivocally, the assailed Demand Letter denied petitioner's protest over the assessment discussed in its letter/position paper of July 24, 2007 and Request for Reconsideration/Reinvestigation dated August 3, 2007." (emphasis ours)

For CTA Case No. 8023 (CTA EB No. 719), the CTA Third Division dismissed the petition for being filed out of time and due to forum shopping.

[7] *Dotmatrix Trading vs. Legaspi*, G.R. No. 155622, October 26, 2009, 604 SCRA 431.
[8] *Rollo*, CTA EB No. 714, pp. 48-49.

Both courts were correct in dismissing CTA Case Nos. 8002 & 8023 for being filed out of time. These cases arose from a post entry audit conducted by the Commissioner of Customs (COC) where the decision of the COC is appealable to the CTA within thirty (30) days from receipt of such decision. Section 2402 of the Tariff and Customs Code of the Philippines (TCCP) provides:

> SEC. 2402. Review by the Court of Tax Appeals. – The party aggrieved by the ruling of the Commissioner in any manner 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.
>
> Unless an appeal is made to the Court of Tax Appeals in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive.

Corrolarily, Section 11 of Republic Act No. 9282 provides:

> SEC. 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 xxx xxx

Petitioner did not observe the period provided under the law. This is shown by the fact that petitioner received on November 12, 2007 the commonly assailed Demand Letter[9] issued by the COC, yet, the petitions were filed only on December 1, 2009 and December 17, 2009 docketed as CTA Case No. 8002[10] and CTA Case No. 8023,[11] respectively.

Hence, petitions were filed out of time.

The disposition of the present consolidated en banc cases should have been contained in a "Decision" and not in a mere "Resolution."

Under Section 4, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, the disposition of the case if NOT on the merits shall be contained in a resolution, it provides:

> SEC. 4. *Resolution.* – Any disposition of the Court *en banc* or in Divisions **other than on the merits** shall be embodied in a Resolution. (emphasis ours)

To remand CTA Case Nos. 7707, 8002 & 8023 to the Court in Division will ultimately REVERSE and SET ASIDE the Resolutions of the Courts in Division which ruled that there was FORUM SHOPPING in CTA Case No. 7707 and that the petitions in CTA Case Nos. 8002 & 8023 were FILED OUT OF TIME. The reversal of these Resolutions is tantamount to a disposition on the merits upholding the timely filing of the petitions and ruling out forum shopping.

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[9] Division Docket, Petition for Review docketed as CTA Case No. 8023, pp. 11-12.
[10] Division Docket, Petition for Review, pp. 1-40 with Annexes.
[11] Division Docket, Petition for Review, pp. 1-40 with Annexes.

Thus, I vote to AFFIRM the Resolutions dismissing CTA Case Nos. 7707, 8002 & 8023.

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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PTT PHILIPPINES TRADING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS,
Respondent.

C.T.A. EB NO. 711
(C.T.A. CASE NO. 7707)

x--*x*

PTT PHILIPPINES TRADING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS and COMMISSIONER OF INTERNAL REVENUE,
Respondents.

C.T.A. EB NO. 714
(C.T.A. CASE NO. 8002)

x--*x*

PTT PHILIPPINES TRADING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS and COMMISSIONER OF INTERNAL REVENUE,
Respondents.

C.T.A. EB NO. 719
(C.T.A. CASE NO. 8023)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:
APR 17 2012 [signature] 4:20 pm

x -- x

CONCURRING and DISSENTING OPINION

PALANCA-ENRIQUEZ, J.:

CONCURRING

With all due respect, after a careful review of the evidence on record, as well as the applicable law and jurisprudence, I concur with Associate Justice Lovell R. Bautista, but only in so far as remanding C.T.A. Case No. 7707 (C.T.A. EB No. 711) to the Second Division considering that this is the main case to be resolved. When petitioner filed C.T.A. Case No. 7707, it did not commit forum shopping since there was no other case involving the same parties and same issues at that time. It bears stressing that in cases of forum shopping, a party initiates two or more actions in separate tribunals, grounded on the same cause, trusting that one or the other tribunal would favorably dispose of the matter *(Chavez vs. Court of Appeals, 610 SCRA 403, citing Philippine National Construction Corporation vs. Dy, 472 SCRA 116)*. Considering that C.T.A. Case No. 7707 was the first case where petitioner first questioned the validity of the assessment against it, there can be no forum shopping considering that there was then no other action filed in another tribunal grounded on the same cause.

DISSENTING

However, as regards the other cases, C.T.A. Case No. 8002 (which was dismissed by the First Division on ground of lack of jurisdiction for being filed out of time) and C.T.A. Case No. 8023 (which was dismissed by the Third Division for being filed beyond the reglementary period), with all due respect to the majority, I find it hard to agree with the reinstatement of C.T.A. Case Nos. 8002 and 8023 and to remand the same to the Third Division for further proceedings. I agree with Associate Justice Juanito C. Castañeda that the reversal of the Resolutions dismissing C.T.A. Case Nos. 8002 and 8023 is tantamount to disregarding the belated filing of both petitions, which cannot be done without transgressing the law and settled jurisprudence. Settled is the rule that perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well *(PNB vs. CIR, G.R. No. 172458, December 14, 2011, citing Air France Phil. vs. Leachon, 472 SCRA 439)*. Further, with all due respect, we cannot just reinstate C.T.A. Case Nos. 8002 and 8023 without resolving the issue of the timeliness of the filing of both Petitions for Review since this was the main ground for dismissing both petitions. Thus, I vote to affirm the dismissals of C.T.A. Case Nos. 8002 and 8023 for reasons discussed in the assailed Resolutions dated July 13, 2010 and December 16, 2010.

For all the foregoing:

1) As regards C.T.A. EB No. 711, I vote to GRANT the Petition for Review and accordingly to REVERSE AND SET ASIDE the assailed Resolutions dated August 26, 2010 and December 8, 2010 in C.T.A. Case No. 7707, and to REMAND the case to the Third Division for further proceedings; and

2) As regards C.T.A. EB No. 714 (C.T.A. Case No. 8002) and C.T.A. EB No. 719 (C.T.A. Case No. 8023), I vote to DENY both petitions and to affirm the assailed Resolutions dated July 13, 2010 and December 16, 2010 in C.T.A. Case No. 8002 (dismissing the petition on the ground of lack of jurisdiction for being filed out of time) and the assailed Resolutions dated August 31, 2010 and January 10, 2011 in C.T.A. Case No. 8023 (dismissing the petition for being filed beyond the reglementary period).

OLGA PALANCA-ENRIQUEZ
Associate Justice