

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

**COMMISSIONER OF CUSTOMS,
COLLECTOR OF CUSTOMS OF THE
PORT OF BATANGAS, AND THE
BUREAU OF CUSTOMS,**

Petitioner,

- versus -

**PILIPINAS SHELL PETROLEUM
CORPORATION (PSPC),
WILLIE J. SARMIENTO, PSPC'S
VICE-PRESIDENT FOR FINANCE
AND TREASURER,
ATTY. CIPRIANO U. ASILO,**

Respondents.

CTA EB Case No. 744
(CTA Case No. 8004)

Members:

ACOSTA, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *J.J.*

Promulgated:

JUN 11 2012

W. Apolinario
10:00 a.m.

X- - - - -X

DECISION

CASANOVA, J.:

Before Us is a Petition for Review¹, filed on April 11, 2011, by petitioners-Commissioner of Customs, Collector of Customs of the Port of Batangas, and the Bureau of Customs, praying that:

"1. the assailed (*sic*) Resolutions of the Third Division of the Honorable Court be **REVERSED** and **SET ASIDE**; and 

¹ En Banc Rollo, (Vol. I), pp. 9-45

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2. Respondents Pilipinas Shell Petroleum Corporation, Willie J. Sarmiento, PSPC's Vice-President for Finance and Treasurer, and Atty. Cipriano U. Asilobe **CITED** for *(sic)* **DIRECT CONTEMPT OF COURT** for their willful and deliberate commission of forum shopping."²

As culled from the records, the facts of the case are as follows:

Petitioner PSPC (respondent herein), is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at the Shell House, 156 Valero Street, Salcedo Village, Makati City, Metro Manila.³

Respondent COMMISSIONER (petitioner herein) is the Commissioner of respondent Bureau of Customs (BOC), a government agency tasked to, among others, collect customs duties, taxes, fees, other charges under the TCCP, and other related laws, rules and regulations. Respondent Commissioner may be served with the legal processes, orders and resolutions of the Honorable Court at the Office of the Commissioner, OCOM Building, Bureau of Customs, Port Area, City of Manila and/or through the Office of the Solicitor General at 134 Amorsolo Street, Legaspi Village, Makati City.⁴

Respondent COLLECTOR (petitioner herein) is the District Collector of Customs of Collection District No. IV at the Port of Batangas who may be served with the legal processes, orders and resolutions of the Honorable Court at the Bureau of Customs, Port of Batangas, Batangas City and/or through the Office of the Solicitor General at 134 Amorsolo Street, Legaspi Village, Makati City.⁵

Respondent BOC (petitioner herein) is an instrumentality of the government of the Republic of the Philippines through which the efforts to collect under Section 1508 of the TCCP may be enforced. It may be served with the legal processes, orders and resolutions of the Honorable Court at the Bureau of Customs Building, Port Area, City of Manila and/or through the Office of the Solicitor General at 134 Amorsolo Street, Legaspi Village, Makati City.⁶

² Petition for Review, Prayer, Ibid, p. 40

³ Petition for Review, par 2.1, Division Docket (CTA Case No. 8004), p. 58

⁴ Ibid, par. 2.2, p. 58

⁵ Id., par. 2.3, p. 59

⁶ Id., par. 2.4, p.59

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On December 3, 2009, Pilipinas Shell Petroleum Corporation (respondent 'PSPC') filed a Petition for Review with this Court in Division docketed as CTA Case No. 8004 seeking the review and reversal of the Letter-Decisions dated November 11 and 26, 2009, of petitioner-Commissioner demanding the payment of excise taxes in the principal amount of P7,348,767,933.00, from respondent-PSPC.

Respondent, likewise, filed, on December 3, 2009, a Verified Motion For The Issuance of A Suspension Order Against The Collection Of Taxes With A Prayer For Immediate Issuance Of A Temporary Restraining Order⁷ (the "Verified Motion").

On December 9, 2009 the CTA First Division promulgated a Resolution⁸ granting respondent-PSPC's prayer for the issuance of a temporary restraining order. On February 9, 2010, the CTA First Division promulgated a Resolution⁹ denying respondent-PSPC's application for the issuance of a suspension order.

Consequently, on February 9, 2010, petitioner-Collector of Customs of the Port of Batangas issued a Memorandum ordering the personnel of the Bureau of Customs (BOC) in the Port of Batangas to hold the delivery of all import shipments of respondent-PSPC to satisfy the excise tax liabilities in the principal amount of P7,348,767,933.00 covering its importations of catalytic cracked gasoline (CCG) and light catalytic cracked gasoline (LCCG) for the years 2004 to 2009.¹⁰

On February 10, 2010, respondent-PSPC, through its counsel, respondent-Atty. Cipriano U. Asilo, filed a Complaint For Injunction (With Prayer For The Ex-Parte Issuance Of A Seventy-Two (72)-Hour Temporary Restraining Order)¹¹ with the Regional Trial Court, Fourth Judicial Region, Batangas City, Branch III, docketed as Civil Case No. 8780.

A 72-hour Temporary Restraining Order (TRO)¹² was issued by Judge Ruben N. Galvez, on February 10, 2010, which TRO was later extended to seventeen (17) more days. 

⁷ Division Docket (CTA Case No. 8004, Vol. I), pp. 6-34

⁸ Ibid, pp. 401-408

⁹ Division Docket (CTA Case No. 8004, Vol. III), pp. 1376-1379

¹⁰ Resolution dated October 18, 2010, par. 3, Division Docket (CTA Case No. 8004, Vol. 8), p. 4109

¹¹ Annex "A" to Compliance dated February 22, 2010, En Banc Rollo (Vol. II), pp. 714-737

¹² Division Docket, (CTA Case No. 8004, Vol. III), pp. 1402-1406

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On March 19, 2010, petitioners filed a Motion To Cite Petitioner Pilipinas Shell Petroleum Corporation, Willie J. Sarmiento, Petitioner's Vice-President for Finance and Treasurer, and Atty. Cipriano U. Asilo For Direct Contempt of Court¹³, with respondents' Comment/Opposition [Re: Motion to Cite Petitioner Pilipinas Shell Petroleum Corporation, Willie J. Sarmiento, Petitioner's Vice-President for Finance and Treasurer, and Atty. Cipriano U. Asilo for Direct Contempt of Court dated 18 March 2010]¹⁴ filed on April 15, 2010.

On July 7, 2010, a Resolution¹⁵ was promulgated consolidating CTA Case No. 8121 with CTA Case No. 8044 (the principal action), pending before the CTA Third Division with the latter conforming to the consolidation per Resolution¹⁶ dated August 6, 2010.

The CTA Third Division denied petitioners' 'Motion To Cite Petitioner Pilipinas Shell Petroleum Corporation, Willie J. Sarmiento, Petitioner's Vice-President for Finance and Treasurer, and Atty. Cipriano U. Asilo for Direct Contempt' in a Resolution¹⁷ (the "First Assailed Resolution") promulgated on October 18, 2010.

Not satisfied with the First Assailed Resolution, petitioners filed a Motion for Reconsideration¹⁸ on November 5, 2010. On January 17, 2011, respondent-PSPC filed its COMMENT/OPPOSITION [To The Motion for Reconsideration dated 04 November 2010].

On March 9, 2011, the CTA Third Division promulgated a Resolution¹⁹ (the 'Second Assailed Resolution') denying petitioners' Motion for Reconsideration for lack of merit.

Undaunted, petitioner filed the instant Petition for Review raising the following ground:

"THE HONORABLE COURT (THIRD DIVISION)
GRAVELY ERRED IN DENYING THE MOTION TO CITE 

¹³ Division Docket, (CTA Case No. 8004, Vol. IV), pp. 2087-2113

¹⁴ Ibid, pp. 2219-2254

¹⁵ Division Docket, (CTA Case No. 8121, Vol. I), p. 109

¹⁶ Ibid, p. 202

¹⁷ Division Docket, (CTA Case No. 8004, Vol. 8), pp. 4059-4066

¹⁸ Ibid, pp. 4070-4087

¹⁹ Annex "B" to Petition for Review (EB Case No. 744), En Banc Rollo, pp. 54-60

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RESPONDENTS IN CONTEMPT DESPITE THE WILLFUL AND DELIBERATE FORUM SHOPPING THEY COMMITTED.”

Petitioners contend that respondents committed forum shopping as shown by the following facts and circumstances, to wit:

1. Respondent-PSPC filed two (2) legal actions, one after the other involving the same parties, i.e. initially, CTA Case No. 8004 and subsequently, Civil Case No. 8780 for Complaint for Injunction;

2. The rights asserted and the reliefs prayed for by respondent-PSPC, in both cases, were essentially the same;

3. Respondent-PSPC filed the Complaint for Injunction in the Regional Trial Court-Batangas City (Civil Case No. 8780) after denial by the CTA First Division of its Verified Motion.

Respondents-PSPC and Willie J. Sarmiento (collectively the ‘respondents’), filed their COMMENT [Re: Petition for Review dated 08 April 2011] on June 23, 2011, stating the following counter-arguments:

I.

“THE HONORABLE COURT’S THIRD DIVISION CORRECTLY DISMISSED THE MOTION FOR CONTEMPT FILED BY PETITIONERS AND RULED THAT RESPONDENTS DID NOT COMMIT FORUM SHOPPING WHEN RESPONDENT PSPC FILED THE RTC CASE, CONSIDERING THAT:

A. CONTRARY TO THE ERRONEOUS CLAIMS OF PETITIONERS, THE RTC CASE AND THE PENDING CTA CASE NO. 8004 ARE FOUNDED ON DIFFERENT SETS OF FACTS.

B. CONTRARY TO THE ERRONEOUS CLAIMS OF PETITIONERS, THE RIGHTS ASSERTED IN THE RTC CASE ARE TOTALLY DIFFERENT FROM THE RIGHTS ASSERTED IN THE PENDING CTA CASE NO. 8004. 

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C. CONTRARY TO THE ERRONEOUS CLAIMS OF PETITIONER, THE RELIEFS SOUGHT IN THE RTC CASE ARE TOTALLY DIFFERENT FROM THE RELIEFS SOUGHT IN THE PENDING CTA CASE NO. 8004.

D. A DECISION RENDERED IN THE RTC CASE WILL NOT CONSTITUTE *RES JUDICATA* IN THE PENDING CTA CASE NO. 8004 BECAUSE, NOT ONLY DO THE TWO (2) CASES INVOLVE DIFFERENT SETS OF FACTS, DIFFERENT RELIEFS SOUGHT, AND DIFFERENT SUBJECT MATTER, BUT ALSO, THE CUSTOMS RESPONDENTS THEMSELVES CLAIM THAT THE RTC-BATANGAS HAS NO JURISDICTION (WHICH IT HAS), WHICH IS A REQUISITE FOR *RES JUDICATA* TO ARISE.

II.

EVEN ASSUMING *ARGUENDO* THAT RESPONDENT PSPC COMMITTED FORUM SHOPPING WHEN IT FILED THE COMPLAINT IN THE RTC CASE, NONETHELESS, THE ALLEGED FORUM SHOPPING WAS NOT WILLFUL AND DELIBERATE; HENCE, THE FILING OF THE MOTION FOR CONTEMPT WAS NOT THE PROPER REMEDY.

III.

IN ANY EVENT, PETITIONERS ARE ESTOPPED FROM CLAIMING THAT RESPONDENT PSPC ALLEGEDLY COMMITTED FORUM SHOPPING, WHICH SERVE AS THEIR BASIS FOR THE PRAYER FOR CONTEMPT OF COURT, CONSIDERING THAT DESPITE THE PREVIOUS OPPORTUNITY GIVEN, THEIR COUNSEL OF RECORD, THE OFFICE OF THE SOLICITOR GENERAL ("OSG"), NOT ONLY FAILED TO CLAIM THAT RESPONDENT PSPC COMMITTED FORUM SHOPPING, BUT EVEN ACCEPTED RESPONDENT PSPC'S EXPLANATION IN ITS COMPLIANCE THAT IT DID NOT COMMIT FORUM SHOPPING."

After a careful and thorough evaluation and consideration of the records and the arguments of both parties, the CTA *En Banc* finds the Petition unmeritorious. 

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The arguments raised by petitioners in the instant Petition for Review are mere reiteration of their arguments in the Motion to Cite Petitioner Pilipinas Shell Petroleum Corporation, Willie J. Sarmiento, Petitioner's Vice-President for Finance and Treasurer, and Atty. Cipriano U. Asilo For Direct Contempt of Court dated March 19, 2010 and Motion for Reconsideration dated November 5, 2010.

The records of the case indubitably show that the CTA Third Division had already fully and exhaustively resolved the issue in relation to the arguments/grounds raised in the Petition.

We quote, hereunder, the pertinent portion of the First Assailed Resolution to which We fully agree, to wit:

"Forum shopping exists 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 issue either pending in, or already resolved adversely, by some other court.

However, the mere filing of several cases based on the same incident does not necessarily constitute forum shopping. The test is whether the actions filed involve the same transactions, same essential facts and circumstances.

The filing of the 'Verified Motion for the Issuance of a Suspension Order against the Collection of Taxes with a Prayer for Immediate Execution of a Temporary Restraining Order' by petitioner on December 3, 2009, which was denied by this Court in a Resolution dated February 9, 2010 and the subsequent filing by petitioner with the RTC of Batangas City of a 'Complaint for Injunction (With Prayer for the Ex-Parte Issuance of a Seventy-Two (72) Hour Temporary Restraining Order)' on February 10, 2010 which was docketed as Civil Case No. 8780, cannot be considered as forum shopping.

First, while there is identity of parties, a careful examination of the two cases would reveal that they are founded on different sets of facts, the rights asserted and the reliefs sought are also different, and a decision in the RTC case will not result to *res judicata* in the instant case. 

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As correctly pointed out by petitioner, the factual antecedents of the instant case would show that the reliefs prayed for in the instant Petition are based on the issuance of the Letter-Decisions dated November 11 and November 26, 2009 by respondent Commissioner, while the Complaint filed before the RTC in Batangas City was instituted based on the Memorandum dated February 9, 2010, issued by respondent Collector. The rights asserted by petitioner in the instant case is its right not to be subjected to second payment of excise tax for importations of CCG and LCCG for the years 2004 to 2009. In the RTC case, petitioner asserted its right over the subject shipments, alleging relevant duties and taxes were already paid and the shipment already released to petitioner's custody which respondent BOC is trying to take back from petitioner.

As to the reliefs sought, petitioner seeks the nullification of the Letter-Decisions dated November 11 and November 26, 2009 by respondent Commissioner and prays that respondents be enjoined from demanding and/or collecting excise taxes and VAT on its CCG's and LCCG's past and future importations. In the RTC case, petitioner prays that respondent be enjoined from taking back the subject shipments which were already released to petitioner's custody.

In fact, when petitioner filed the Complaint with the RTC, Mr. Willie Sarmiento, the Vice-President for Finance of petitioner who signed the Verification and Certification of Non-Forum Shopping, indicated that petitioner filed a Petition for Review entitled '*Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs, Collector of Customs of the Port of Batangas and the Bureau of Customs*' before the First Division of this Court, which involve different issues and/or reliefs.

Finally, considering that there is no identity of the rights asserted and reliefs prayed for in the instant case and the RTC case, it follows that a decision by the RTC will not affect, much less contradict, a decision in the instant case; hence, there will be no *res judicata*."

In sum, We find no cogent reason and justification to disturb the findings and conclusions spelled out in the Assailed Resolutions dated October 18, 2010 and March 9, 2011 Resolutions of the CTA Third Division. 

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WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the October 18, 2010 and March 9, 2011 Resolutions of the CTA Third Division are hereby **AFFIRMED** *in toto*.

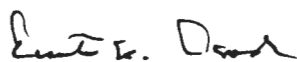
SO ORDERED.



CAESAR A. CASANOVA

Associate Justice

WE CONCUR:



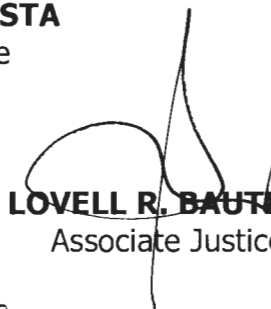
ERNESTO D. ACOSTA

Presiding Justice



JUANITO C. CASTAÑEDA, JR.

Associate Justice



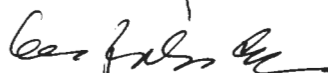
LOVELL R. BAUTISTA

Associate Justice



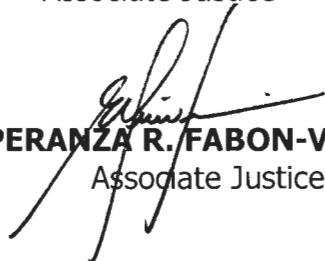
ERLINDA P. UY

Associate Justice



OLGA PALANCA-ENRIQUEZ

Associate Justice



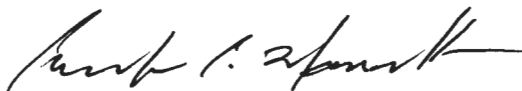
ESPERANZA R. FABON-VICTORINO

Associate Justice



CIELITO N. MINDARO-GRULLA

Associate Justice



AMELIA R. COTANGCO-MANALASTAS

Associate Justice

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the above Decision has been 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.


ERNESTO D. ACOSTA
Presiding Justice