REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL FOOD AUTHORITY, represented by the Director of NFA Region II,
Petitioner,

-versus-

PROVINCE OF NUEVA VIZCAYA, RHODA D. SORIANO-MORENO, Office of the Provincial Treasurer and the Provincial Assessor's Office, Province of Nueva Vizcaya,
Respondents.

CTA *EB* NO. 2361
(CTA AC No. 192)

Present:

DEL ROSARIO, *P.J.,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
JUN 2 7 2022
4:30 pm

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review (Under Rule 8 of A.M. No. 05-11-07-CTA) with Motion for Suspension of Collection of Tax*[1] filed by the National Food Authority (NFA) assailing the Decision dated February 3, 2020 and the Resolution dated September 21, 2020; both of the Second (2nd) Division (Court in Division) in CTA Case AC Case No. 192 which affirmed the Decision rendered by the Regional Trial Court Branch 29 of Bayombong, Nueva Vizcaya (RTC Branch 29), and its Resolution dated September 29, 2017. The pertinent portions of the Decision and Resolution are quoted below:

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[1] EB Docket, pp. 4-23.

Decision dated February 3, 2020:

"Records show that Notices of Delinquency issued by Provincial Treasurer, Ms. Rhoda D. Soriano-Moreno on March 23, 2016 which demanded payment of real property taxes in the total amount of Php2,848,686.50 on various properties of petitioner, were issued and sent to petitioner. In fact, the notice was received by its employee, Milagros Torralba, on March 23, 2016. This was admitted by petitioner. Thus, counting sixty (60) days from its receipt on March 23, 2016, the petitioner had until May 23, 2016 within which to file the Petition. Petitioner filed the Petition for Prohibition before the RTC only on June 14, 2016. Hence, the Petition for Prohibition was filed out of time.

xxx xxx xxx

WHEREFORE, premises considered, the Petition for Review is **DENIED**, for lack of merit. Accordingly, the Decision dated July 28, 2017, rendered by the Regional Trial Court Branch 29 of Bayombong, Nueva Vizcaya, and its Resolution dated September 29, 2017 are **AFFIRMED.** No pronouncement as to costs.

SO ORDERED.

Resolution dated September 21, 2020:

WHEREFORE, premises considered, the *Motion for Reconsideration* (of the Decision dated 03 February 2020) is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

The Court in Division narrated the factual antecedents, as follows:

"Petitioner is created under Presidential Decree (PD) No. 4, as amended, otherwise known as the National Grains Industry Development Act. It is being represented by Mario M. Gonzales, Director of NFA-Region II who is authorized pursuant to NFA Council Resolution No. 383-2K8-B. Petitioner may be served with summons and other court processes at NFA Legal Affairs Department (LAD), SRA Annex 2 Building, North Avenue, Diliman, Quezon City.

On the other hand, respondent, Province of Nueva Vizcaya is a political subdivision created pursuant to law, while respondents Provincial Treasurer Rhoda D. Soriano-Moreno and provincial Assessor are both public officers, of the Province of Nueva Vizcaya. Respondents may be served with summons and other court processes at their office address at Capitol 3700, Bayombong, Province of Nueva Vizcaya.

By virtue of PD No. 4, the National Grains Authority (NGA) was created to effect the development of the country's rice and corn industry. Subsequently, PD No. 4 was further amended by PD No. 699 and later on by PD No 1485.

Thereafter, by virtue of PD No. 1770, the NGA was reconstituted into National Food Authority (NFA) with the intention of expanding the functions and powers of the NGA to cover not only the grains industry but other basic food commodities as well.

Petitioner is the owner of several real properties constituting of land, buildings and machinery located at Barangay Bagabag and Barangay Bayombong, both in the Province of Nueva Vizcaya, which are covered by seven (7) Tax Declaration Nos. 2010-030006-0515, 2010-1412, 2010-030006-0516, 2010-0380, 2010 -1414, 2010-1417 and 2010-1413.

On March 23, 2016, respondent Provincial Treasurer, Ms. Rhoda D. Soriano-Moreno, issued seven (7) Notices of Delinquency demanding payment for real property taxes in the total amount of P2,848,686.50 on various properties declared in the name of petitioner located in the Province of Nueva Vizcaya. The Notice of Delinquency was received by petitioner's employee, Milagros Torralba, on March 23, 2016.

On June 14, 2016, petitioner filed a Petition for Prohibition (With Application for the Issuance of a Preliminary Injunction and/or Temporary Restraining Order) under Section 2 of Rule 65 of the Rules of Court before RTC Bayombong, Nueva Vizcaya, questioning the authority and power of respondents to impose and collect real property taxes, on the alleged ground that it is a government instrumentality that is exempt from payment thereof. The case was docketed as Special Civil Action No. 0051 and was raffled to RTC- Branch 29 of Bayombong, Nueva Vizcaya.

Thereafter, trial ensued.

The RTC-Branch 29 Of Bayombong, Nueva Vizcaya issued a Decision dated July 28, 2017, dismissing the Petition for Prohibition, finding that petitioner is a Government Owned and Controlled Corporation (GOCC)- a taxable entity, which dispositive portion is quoted hereunder as follows:

> *"Wherefore, in view of the foregoing, the instant Petition for Prohibition is hereby DISMISSED.*
>
> *SO ORDERED."*

> On August 23, 2017, petitioner filed its Motion for Reconsideration (Of the Decision dated 28 July 2017). On October 19, 2017, petitioner received the Resolution dated September 29, 2017 which denied its motion for lack of merit.
>
> Hence, petitioner filed the present Petition for Review. Respondents filed their Comment/Opposition to Petitioner-Appellant's Petition for Review (With Motion to Dismiss), through registered mail on February 13, 2018 and received by the Court on February 21, 2018.
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> Memorandum (For the Petitioner) was filed on January 18, 2019, while Memorandum (For the Respondent-Appellees) was filed through registered amil on February 13, 2019 and received by the Court on February 21, 2019. On March 6, 2019, the case was deemed submitted for decision."

On February 3, 2020, the Court in Division rendered the assailed Decision which denied the Petition for Review and affirmed the Decision and Resolution of RTC Branch 29.

On February 21, 2020, petitioner filed a Motion for Reconsideration seeking the reversal of the Court in Division's Decision.

On September 21, 2020, the Court in Division issued the assailed Resolution.

On October 28, 2020,[2] petitioner NFA filed its Petition for Review with the Court *En Banc.*[3]

On February 18, 2021, respondents filed their Comment/Opposition (To Petitioner's Petition for Review with Motion for Suspension of Collection of Taxes) which was received by the Court on February 24, 2021.

On May 26, 2021, petitioner filed its Reply (to Respondent's Comment/Opposition dated 16 February 2021).

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[2] EB Docket, pp.4-25
[3] EB Docket, pp. 140-141.

On July 21, 2021, the instant Petition for Review was submitted for decision.[4]

THE ISSUES

Petitioner submits the following grounds/assignment of errors for the petition:

I. THE HONORABLE CTA 2nd DIVISION ERRED IN HOLDING THAT IT HAS NO JURISDICTION TO ENTERTAIN THE PRESENT CASE FOR PETITIONER'S FAILURE TO COMPLY WITH THE PROCEDURAL REQUIREMENTS LAID DOWN UNDER SECTIONS 252, 226 AND 229 OF THE LOCAL GOVERNMENT CODE OF 1991, AS AMENDED;

II. THE HONORABLE CTA 2ND DIVISION ERRED IN HOLDING THE PETITION FOR PROHIBITION OF NFA BEFORE THE RTC WAS FILED OUT OF TIME;

III. THE HONORABLE CTA 2ND DIVISION ERRED IN AFFIRMING THE RULING OF THE RTC AS CONTAINED IN THE LATTER'S DECISION DATED 28 JULY 2017 and RESOLUTION DATED 29 SEPTEMBER 2017.

<u>Petitioner's Arguments</u>

Petitioner seeks the reversal of the Court in Division's Decision and Resolution affirming the Decision of RTC-29 of Bayombong, Nueva Vizcaya which ruled as follows:

1. The Special Civil Action for Prohibition filed by petitioner was filed out of time; and

2. As a government owned and controlled corporation (GOCC), petitioner is not exempt from the payment of real property tax (RPT).

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[4] EB Docket, pp. 63-64.

In addition, petitioner assails the conclusion of the Court in Division that it has no jurisdiction to entertain the Petition for Review for its alleged failure to comply with the procedural requirements under Sections 252, 226 and 229 of the Local Government Code of 1991 (LGC of 1991).

Petitioner maintains that the filing of appeals with the Local Board of Assessment Appeals (LBAA) and the Central Board of Assessment Appeals (CBAA) are not the proper remedies applicable in the instant case because it is not questioning the reasonableness of the amount of the Real Property Tax (RPT) assessment involved but is, rather, questioning the very authority of respondents to assess, impose and collect RPT on the ground of its exemption from said tax. Petitioner defends its choice of filing the Special Civil Action of Petition for Prohibition with RTC Branch 29 as it had no other plain, speedy and adequate remedy available under the Rules and cited the decision of the Supreme Court in *Ty vs, Trampe,*[5] where a supposed exception to the rule on exhaustion of administrative remedies is applied when a controversy does not involve questions of facts but only of law. By necessary inference, petitioner also refutes the ruling of the Court in Division that prior payment under protest is a vital requirement because as explained earlier, appeal to the LBAA is not the relevant remedy under the present circumstances. In gist, petitioner avers that resort to administrative remedies, e.g., appeal to the LBAA and CBAA, is not applicable when the controversy centers on the authority and power of the assessor to impose the assessment and of the local treasurer to collect RPT, in which case, resort to judicial action is proper.

As regards the timeliness of the filing of the Petition for Prohibition with RTC Branch 29, petitioner asserts that it was indeed filed within the sixty (60) day period prescribed under Rule 65 of the Revised Rules of Court and should be reckoned from the date the Final Demand (Notice of Delinquency) was received by the NFA-Administrator and indorsed to the NFA-Legal Affairs Department on April 16, 2016 and not from the date said notice was received by its employee at the NFA-Nueva Vizcaya Provincial Office on March 23, 2016. Therefore, petitioner states that when it filed the Petition for Prohibition on June 15, 2016 with RTC Branch 29, this was still within the 60-day period provided by the Rules.

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[5] G.R. No. 117577, December 1, 1995.

On the substantive merits of the assessment, petitioner alleges that Section 133 of the LGC of 1991 grants tax exemption from the payment of RPT to government instrumentalities. It is further alleged that the new mandate of NFA under Republic Act (RA) No. 11203 suggests that its function is purely "governmental" and not engaged in profit-oriented activities, hence, must not be taxed.

Respondents' Counter-Arguments

Respondents express their concurrence with the Court's ruling that it has no jurisdiction over the instant case due to petitioner's failure to comply with Sections 252, 226 and 229 of the LGC of 1991 and contends that a claim for exemption from the payment of RPT is actually in the nature of questioning the reasonableness or correctness of the assessment made by the local assessor, hence, is a question of fact and must be resolved at the first instance, by the LBAA.

Respondents also support the position of the Court that the Petition for Prohibition filed with RTC Branch 29 was filed beyond the 60-day period prescribed by the Revised Rules of Court and correctly ruled that this should be reckoned from March 23, 2016, the date when the Final Demand (Notice of Delinquency) was received by its employee at the NFA- Nueva Vizcaya office and not from April 16, 2016, the date when the same was endorsed to the NFA Legal Affairs Department.

Lastly, respondents do not see any plausible reason to depart from the finding of the Court in Division that petitioner is a Government Owned and Controlled Corporation (GOCC) which is subject to RPT under the LGC of 1991.

RULING OF THE COURT

The instant Petition for Review was timely filed.

Records show that petitioner received the assailed Resolution of the Court in Division dated September 21, 2020 on October 13, 2020.

Pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b),[6] petitioner has fifteen days from such receipt, or until October 28, 2020, within which to file its Petition for Review.

Thus, the instant Petition for Review was timely filed on October 28, 2020.

We are now called upon to first dispose the issue of jurisdiction because this will determine whether the Court has the authority to rule on the other issues raised by both parties as clearly enunciated by the Supreme Court in the case of *Mitsubishi Motors vs. CIR,*[7] and we quote:

> "Jurisdiction is defined as the power and authority to hear, try, and decide a case. **In order for the court or an adjudicative body to have the authority to dispose of the case on the merits it must acquire among others, jurisdiction over the subject matter**. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. **Thus, when a court has no jurisdiction over the subject matter, the only power it has it to dismiss the action.**" (emphasis supplied)

The instant Petition for Review raises both procedural and substantive issues as regards the remedies proper to the issuance of an assessment for RPT.

The facts show that seven (7) Notices of Delinquency were issued against petitioner demanding payment for real property taxes in the total amount of P2,848,686.50 on various properties declared in the name of petitioner located in the Province of Nueva Vizcaya. These notices were received by petitioner's employee located in its Nueva Vizcaya office on March 23, 2016. Subsequently, petitioner filed a Petition for

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[6] Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.*
xxx xxx xxx
(b) A party adversely by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[7] G.R No. 209830, June 17, 2015.

Prohibition (With Application for the Issuance of a Preliminary Injunction and/or Temporary Restraining Order) on June 14, 2016 with RTC Branch 29 Bayombong, Nueva Vizcaya.

Ruling on the procedural aspect of the remedy availed of by petitioner, the Court in Division found that the Petition for Prohibition is not the proper remedy against the RPT assessments issued by the Provincial Treasurer of Nueva Vizcaya.

We agree with the Court in Division.

The Special Civil Action of Prohibition is governed by Section 2 of Rule 65 of the Revised Rules of Court which provides as follows:

> "Section 2. *Petition for prohibition.* – When the proceeding of any tribunal, corporation, board, officer or person whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, **and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law,** a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require." (emphasis supplied)

Central to the remedy of Prohibition is the absence of any appeal or any other plain, speedy and adequate remedy in the ordinary course of law.

The Supreme Court has in a number of cases provided for the limitations inherent in availing of the remedy of Prohibition as a Special Civil Action, and this was expressed succinctly in the case of *Araullo et al., vs. Benigno Aquino III, et al.*[8] quoting its decision in the case of *Holy Spirit Homeowners Association, Inc. vs. Defensor*, to wit:

> "A petition for prohibition is also not the proper remedy to assail an IRR issued in the exercise of a quasi-legislative function. **Prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer**

[8] G.R. Nos. 209287, 208135, 209136, 209155, 209164, 209260, 209442, July 1, 2014.

> **or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Prohibition lies against judicial or ministerial functions, but not against legislative or quasi-legislative functions.**" (emphasis supplied)

The antecedent facts of this case show that petitioner has an available plain and adequate administrative remedy against an RPT assessment found in the provisions of the LGC of 1991 beginning with the filing of the protest provided under Section 252, which provides as follows:

> "Section 252. *Payment under Protest.* –
>
> (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
>
> (b) xxx
>
> (c) xxx
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> **(d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code."** (emphasis supplied)

The remedies referred to in subsection (d) of Section 252 of the LGC of 1991 "as provided in Chapter 3, Title Two, Book II of this Code" are found in the following legal provisions of the same Code, and we quote:

> "Section 226. *Local Board of Assessment Appeals.* – Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city, by filing a petition under

oath in the form prescribed for the purpose together with copies of the tax declarations and such affidavits or documents in support of the appeal."

xxx xxx xxx

"Section 229. *Action by the Local Board of Assessment Appeals.*

(a) The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

(b) In the exercise of its appellate jurisdiction, the Board shall have the powers to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue subpoena and subpoena duces tecum. The proceedings of the Board shall shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.

(c) The secretary of the Board shall furnish the owner of the property having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board may, within thirty (30) days after receipt of the decision of said Board, appeal to the CBAA, as herein provided. The decision of the CBAA shall be final and executory.

"Section 231. Effect of Appeal on the Payment of Real Property Tax. – Appeal on real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal."

Noteworthy in the afore-quoted Section 252 of the LGC of 1991 is the requirement of "payment under protest," otherwise, the city or municipal treasurer will not act on said protest. If the protest is denied or not acted upon within 60 days from filing, the taxpayer or the person having legal interest over the property may then file an appeal with the LBAA, which has 120 days from date of receipt of such appeal to render a decision. If the taxpayer is unsatisfied with the decision of the LBAA, the taxpayer may elevate an appeal with the CBAA within thirty (30) days from receipt of the decision of the LBAA. If the CBAA still renders an adverse decision, the aggrieved taxpayer may avail the judicial remedy and elevate an appeal with the Court of Tax Appeals (CTA) in accordance with Section 7 (a) (5) and 11 of RA No. 1125, as amended by RA Nos. 9282 and 9503 and Section 2 (e) Rule 4 of the RRCTA.

In sum, the Petition for Prohibition is not an adequate remedy when administrative remedies are outlined clearly by law. In order that prohibition will lie against an executive officer, the petitioner must first exhaust all administrative remedies, as prohibition is available only when there is no other plain, speedy and adequate remedy in the ordinary course of law.[9]

Apart from the arguments on the procedural aspect of the choice of remedy, petitioner likewise rationalizes the substantive merits of taking the judicial route against the RPT assessments and maintains that when a taxpayer is questioning the very authority of respondents to assess, impose and collect RPT on the ground of its exemption, the proper remedy is to file a judicial action instead of filing a protest under Section 252 of the LGC of 1991.

Petitioner's argument is bereft of merit.

Petitioner's principal argument against the RPT assessment is that as a government instrumentality, it is exempt from the payment of RPT. Jurisprudence holds that a claim for tax exemption from the payment of RPT is a question that deals with the reasonableness or correctness of an assessment contrary to the contention of petitioner.

In the case of *Camp John Hay Development Corporation vs. CBAA, et.al.*[10]*(Camp John Hay)*, the Supreme Court ruled that a claim for tax exemption raises a question of reasonableness or correctness of an assessment which

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[9] *Cabedo, et al., vs. Director of Lands, et al.*, L-12777, May 23, 1961.
[10] G.R. No. 169234 dated October 2, 2013.

requires compliance with Section 252 of the LGC of 1991, pertinent portions are quoted as follows:

> "All told, **We go back to what was at the outset stated, that is, that a claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax, but merely raises a question of the reasonableness or correctness of such assessment, which requires compliance with Section 252 of the LGC of 1991**. Such argument may involve a question of fact that should be resolved at the first instance by the LBAA." (emphasis supplied)

The afore-quoted ruling of the Supreme Court in the *Camp John Hay* case was later affirmed in the case of *Napocor vs. The Provincial Treasurer of Benguet, et al.,*[11] quoted as follows:

> "xxx xxx. **As settled in jurisprudence, a claim for exemption from the payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA.** The very same may be inferred in Section 206 of the LGC of 1991 xxx xxx" (emphasis supplied)

Based on the above disquisitions, we agree with the Court in Division that the Petition for Prohibition is not the proper remedy and that petitioner should have exhausted the administrative remedies discussed earlier. Petitioner's failure to file the necessary protest pursuant to Section 252 of the LGC of 1991 and to pay the tax under protest made the subject RPT assessments final, executory and demandable. It is well-settled that the Court of Tax Appeals has no jurisdiction over final and executory assessments.[12]

Having ruled that this Court has no jurisdiction over the instant Petition for Review, we are restrained from ruling on the other issues raised.

WHEREFORE, the Petition for Review with Motion for Suspension of Collection of Tax is **DENIED** for lack of merit. Accordingly, the assailed Decision dated February 3, 2020 and the assailed Resolution dated September 21, 2020, all

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[11] G.R. No. 209303 dated November 14, 2016.
[12] *Protector's Services, Inc. vs. Court of Appeals and CIR,* G.R. No. 118176, April 12, 2000.

promulgated by the Second Division of this Court, and are hereby **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
(I Join the Separate Opinion of PJ Del Rosario)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL FOOD AUTHORITY, represented by the Regional Director of NFA Region II, Petitioner,	**CTA EB No. 2361** (CTA AC No. 192)
	Present:
- versus -	**DEL ROSARIO**, P.J., **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, and **CUI-DAVID**, JJ.
PROVINCE OF NUEVA VIZCAYA, RHODA D. SORIANO-MORENO, Office of the Provincial Treasurer and the Provincial Assessor's Office, Province of Nueva Vizcaya, Respondents.	Promulgated: JUN 27 2022 4:30pm

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SEPARATE OPINION

***DEL ROSARIO, P.J.*:**

I concur in the denial of the instant Petition for Review with Motion for Suspension of Collection of Tax on the sole ground that the filing of petitioner's Petition for Prohibition (With Application for the Issuance of a Preliminary Injunction and/or Temporary Restraining Order) with the Regional Trial Court (RTC) was made beyond the prescribed period.

In *Visayan Electric Company Employees Union-ALU-TUCP and Casimero Mahilum vs. Visayan Electric Company, Inc. (VECO)*,[1] the Supreme Court explained the mandatory nature of the sixty (60)-day

[1] G.R. No. 205575, July 22, 2015.

period to file a special civil action under Rule 65 of the Rules of Court, as amended, to wit:

> "First. The fact that the delay in the filing of the petition for certiorari was only one day is not a legal justification for non-compliance with the rule requiring that it be filed not later than sixty (60) days from notice of the assailed judgment, order or resolution. The Court cannot subscribe to the theory that the ends of justice would be better served by allowing a petition for certiorari filed only one day late. **When the law fixes sixty (60) days, it cannot be taken to mean also sixty-one (61) days**, as the Court had previously declared in this wise:
>
>> [W]hen the law fixes thirty days [or sixty days as in the present case], we cannot take it to mean also thirty-one days. If that deadline could be stretched to thirty-one days in one case, what would prevent its being further stretched to thirty-two days in another case, and so on, step by step, until the original line is forgotten or buried in the growing confusion resulting from the alterations? That is intolerable. **We cannot fix a period with the solemnity of a statute and disregard it like a joke. If law is founded on reason, whim and fancy should play no part in its application.**
>
> Second. While it is always in the power of the Court to suspend its own rules, or to except a particular case from its operation, **the liberality with which equity jurisdiction is exercised must always be anchored on the basic consideration that the same must be warranted by the circumstances obtaining in the case**. However, there is no showing herein of any exceptional circumstance that may rationalize a digression from the rule on timeliness of petitions." (*Boldfacing supplied*)

In truth, petitioner has not offered any exceptional circumstance to justify its failure to comply with the rules. Instead, it insists on its erroneous interpretation that the sixty (60)-day period should commence from the date the Notices of Delinquency were endorsed to the Administrator of the National Food Authority (NFA) on April 16, 2016.[2] As correctly ruled by Court in Division in its Decision dated February 3, 2020, the sixty (60)-day period should be counted from receipt of the Notices by the NFA-Nueva Vizcaya Provincial Office on March 23, 2016. Thus, the filing of the Petition for Prohibition on June 14, 2016 was beyond the prescribed period.

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[2] Petition for Review, EB Docket, pp.13-15.

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Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[3]

ALL TOLD, I **VOTE** to deny the instant Petition for Review on the **sole ground** that the Petition for Prohibition (With Application for the Issuance of a Preliminary Injunction and/or Temporary Restraining Order) was filed with the RTC beyond the prescribed period.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] *Sps. David Bergonia and Luzviminda Castillo vs. Court of Appeals (4th Division) and Amado Bravo, Jr.*, G.R. No. 189151, January 25, 2012.