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**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

**CTA EB CRIM. CASE No. 007
(CTA Crim. Case No. O-098)**

Present:

-versus-

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

**ALLAN FRANCISCO, BOBBY GARCIA,
TIM BRANDO RATILLA, JENNYLYN
BIADO,**

Respondents.

Promulgated:

FEB 15 2011

Atty. Polinaro
1:35 p.m.

X-----X

DECISION

CASTAÑEDA, JR., J.:

Before Us is a petition for review *En Banc* filed on February 2, 2010 by petitioner People of the Philippines (petitioner, for brevity) assailing the *je*

Resolutions of the CTA First Division¹ dated August 27, 2009 and January 5, 2010.

The dispositive portion of the August 27, 2009 Resolution reads:

WHEREFORE, premises considered, CTA Criminal Case No. O-098 entitled, "*People of the Philippines, plaintiff vs. Allan Francisco, Bobby Garcia, Tim Brando Ratilla and Jennylyn Biado, accused.*" is hereby **DISMISSED** for plaintiff's failure to prosecute. The "Motion for Judicial Redetermination of Probable Cause" filed by accused –TIM BRANDO RATILLA and JENNYLYN BIADO is hereby rendered **MOOT** and **ACADEMIC**.

SO ORDERED.

The dispositive portion of the January 5, 2010 Resolution provides, as follows:

WHEREFORE, in view of the foregoing, the plaintiff's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.

The Facts

Petitioner in this case is represented by the Bureau of Customs, by counsel.²

Respondents Allan Francisco and Bobby Garcia are the President and representative, respectively, of FMA MOTORS INCORPORATED, a corporation duly organized in accordance with existing laws of the Philippines. On the other hand, respondents Tim Brando Ratilla and Jennylyn Biado were the Licensed 

¹ Composed of Presiding Justice Ernesto D. Acosta, Associate Justice Lovell R. Bautista (now Chairperson of the CTA Third Division), and Associate Justice Caesar A. Casanova (now a member of the CTA Second Division).

² *En banc* Docket, p. 1.

Customs Broker and the alleged representative of the latter, respectively, that facilitated the alleged unlawful importation of the above-named corporation.³

On September 4, 2008, Associate Prosecution Attorney II Rohairah Lao-Tamano filed with the CTA an Information⁴ charging Allan Francisco, Bobby Garcia, Tim Brando Ratilla and Jennylyn Biado (respondents in this *En Banc* case), of violation of Section 3602, in relation to Sections 2503 and 2530 of the Tariff and Customs Code of the Philippines, as amended. The accusatory portion of the Information reads:

"That on or about May 23, 2007, in Manila City, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, through false declaration in the Import Entry and Internal Revenue Declaration and other pertinent documents filed with the Bureau of Customs covering the shipment of 1x40' container van with No. ENMCU9371632 said to contain various used replacement parts, truck parts and others consigned to FMA Motors, Inc. which arrived at the port of Manila from Yokohama, Japan, with declared value of **USD TWO THOUSAND ONE HUNDRED EIGHT DOLLARS & 50/100** only and paid duties and taxes in the amount of **THIRTY ONE THOUSAND FOUR HUNDRED TWENTY FIVE (Ph P31,425.00) PESOS** only when in truth and in fact the aforesaid container van actually contains *imported three (3) units of used luxury motor vehicles and five (5) units of disassembled (chop-chop) minivans* with a dutiable value of **TEN MILLION THIRTY SEVEN THOUSAND FIVE HUNDRED EIGHTY FOUR (Php10,037,584.00) PESOS** and a total duties and taxes of **ONE MILLION SEVEN HUNDRED FORTY ONE EIGHT HUNDRED EIGHTY EIGHT (Php1,741,888.00) PESOS**, to the damage and prejudice of the government."

CONTRARY TO LAW.

On October 9, 2008, CTA First Division ordered Public Prosecutor Attorney Rohairah Lao-Tamano to submit proof to the said Court within five (5) days that *jr*

³ *Ibid.*, pp. 2-3.

⁴ Division Docket, pp. 1-3.

the filing of criminal case against the respondents is with the written approval of the Commissioner of Customs pursuant to Sec. 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA).⁵

In a Resolution⁶ dated October 29, 2008, the CTA First Division noted the "Compliance" of Associate Prosecution Attorney II Rohairah Lao-Tamano submitting a photocopy of the REFERRAL FOR PRELIMINARY INVESTIGATION from the Commissioner of Customs. In addition, the CTA First Division determined the existence of probable cause and issued a warrant of arrest against respondents Allan Francisco, Bobby Garcia, Tim Brando Ratilla and Jennylyn Biado. Bail bond was fixed at P120,000.00 each.

Per Officer's Return of the Warrant of Arrest⁷ dated November 21, 2009⁸, the CTA Sheriff certified that he furnished a copy of the warrant of arrest upon the respondents to the National Bureau of Investigation-Manila, NBI Cavite, Philippine National Police-Camp Crame, PNP Quezon City Station Commander, PNP Marikina City Station Commander and PNP Imus Station Commander.

On the December 2, 2008 Resolution⁹, the CTA First Division noted the "Order (On Motion for Inhibition)" submitted by Associate Prosecution Attorney II ROHAIRAH LAO-TAMANO of the Department of Justice informing the Court that she has inhibited from handling the case to avoid malicious imputation of bias and impartiality. Thus, the Chief Prosecutor of the Department of Justice was 

⁵ *Ibid*, pp. 110-111.

⁶ *Ibid*, pp. 127-128.

⁷ This was written at the back of p. 133, Division Docket.

⁸ Should be 2008.

⁹ *Ibid*, pp. 142-143.

ordered to furnish this Court the name of the substitute Public Prosecutor in the case within ten (10) days from receipt of the Resolution.

On January 16, 2009, the CTA First Division received the warrants of arrest for respondents Jennylyn Biado and Tim Brando Ratilla which were returned unserved by Imus Police Station¹⁰ and Marikina Police Station¹¹, respectively.

On March 10, 2009, the CTA First Division ordered the issuance of an Alias Warrant of Arrest against Tim Brando Ratilla and Jennylyn Biado.¹²

On March 31, 2009, the CTA First Division received a letter¹³ dated March 30, 2009 signed by respondent Allan Butch T. Francisco authorizing Atty. Dilbert N. Quetulio to secure office copies of the Information/Complaint-Affidavit, Warrant of Arrest and other documents relative to Criminal Case No. O-098 to apprise and guide him.

On May 5, 2009, the counsel for respondents Tim Brando Ratilla and Jennylyn Biado, by way of special appearance, filed a "Motion for Judicial Redetermination of Probable Cause."¹⁴

On June 1, 2009, the CTA First Division, in its Resolution¹⁵, ordered the Department of Justice to comply with the December 2, 2008 Resolution within a final and non-extendible period of ten (10) days from receipt of the Resolution. 

¹⁰ *Ibid*, pp. 134- 135.

¹¹ *Ibid*, pp. 136-137.

¹² *Ibid*, p. 146.

¹³ The said letter bears no pagination but it is placed in between page 133 and 134.

¹⁴ Division Docket, pp. 158-169.

¹⁵ *Ibid*, pp. 171-172.

The CTA First Division noted that on May 5, 2009, the Marikina Police Station returned a copy of the Alias Warrant of Arrest issued against respondent Tim Brando Ratilla stating therein that he cannot be located at the given address. Accordingly, the Bureau of Customs (BOC) was ordered to inform the Court of any developments regarding the whereabouts of respondent Tim Brando Ratilla. The Chief State Prosecutor or the substitute Public Prosecutor in the case was also ordered to file a Comment on respondents Tim Brando Ratilla and Jennylyn Biado's "Motion for Judicial Redetermination of Probable Cause" within a non-extendible period of ten (10) days from receipt of the Resolution. After compliance with the Resolution, or the expiration of the period without submission of the required Comment, the said motion will then be submitted for resolution.

On August 27, 2009, the CTA First Division found out that per records of the case, both the Prosecution Staff, Docket Section of the Department of Justice (DOJ) and the Legal Service, Bureau of Customs (BOC) received the June 1, 2009 Resolution on June 8, 2009. However, there was no compliance with regard to the June 1, 2009 Resolution. Thus, CTA Criminal Case No. O-098 entitled, "*People of the Philippines, plaintiff vs. Allan Francisco, Bobby Garcia, Tim Brando Ratilla and Jennylyn Biado, accused.*" was dismissed for plaintiff's failure to prosecute. The "Motion for Judicial Redetermination of Probable Cause" filed 

by respondents—TIM BRANDO RATILLA and JENNYLYN BIADO was rendered moot and academic.¹⁶

Petitioner filed its Motion for Reconsideration (With Entry of Appearance as Special Prosecutor)¹⁷ on September 18, 2009.

On October 19, 2009, the counsel for respondents Tim Brando Ratilla and Jennylyn Biado, by way of special appearance, filed the Opposition (To Plaintiff's Motion for Reconsideration).¹⁸

On December 4, 2009, the State Prosecutor Bernardo L. Parico of the Department of Justice informed the Court that in compliance with the Court's Resolution promulgated on December 2, 2008, he was designated to handle the prosecution of CTA Crim. Case No. O-098.¹⁹

On January 5, 2010, the CTA First Division, in its Resolution²⁰, denied for lack of merit petitioner's "Motion for Reconsideration" and noted the December 4, 2009 Compliance of the Department of Justice as to the December 2, 2008 Resolution of this Court.

On February 2, 2010, petitioner, represented by the Bureau of Customs, by counsel, filed the Petition for Review *En Banc*.²¹

On March 10, 2010, the CTA *En Banc* promulgated a resolution ordering respondents to file their respective Comment, not a Motion to Dismiss, within ten 

¹⁶ Resolution, *Ibid*, pp. 173-175.

¹⁷ Division Docket, pp. 177-185.

¹⁸ *Ibid*, pp. 187-194.

¹⁹ *Ibid*, pp. 196-197.

²⁰ *Ibid*, pp. 200-203.

²¹ *Ibid.*, p. 204.

(10) days from receipt of the said resolution. However, respondents Tim Brando Ratilla and Jennylyn Biado, thru counsel, filed Motion to Dismiss on April 5, 2010.

In a Resolution dated April 26, 2010, for failure of the respondents to file the requisite Comment within the specified period, both parties were directed by the CTA *En Banc* to submit their simultaneous Memoranda within thirty (30) days from receipt of the said Resolution. Further, a warning was given to the counsel of respondents Tim Brando Ratilla and Jennylyn Biado that another act of defiance or similar antics relative to the Court's Resolution shall be dealt with accordingly.

On May 26, 2010, petitioner filed its Memorandum. On the other hand, the counsel for respondents Tim Brando Ratilla and Jennylyn Biado filed their Memorandum on June 3, 2010.

On June 16, 2010, this case was submitted for decision.

Hence, this decision.

Issues

Petitioner alleges the following grounds:

- I. THE COURT OF TAX APPEALS COMMITTED A REVERSIBLE ERROR IN FAILING TO RECONSIDER ITS DISMISSAL OF THE CTA CRIM. CASE NO. O-098 IN ITS ASSAILED RESOLUTION DATED 05 JANUARY 2010.
- II. THE COURT OF TAX APPEALS COMMITTED A REVERSIBLE ERROR, HAVE ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR HAVE GRAVELY ABUSED ITS DISCRETION IN DISMISSING CTA CRIM CASE NO. O-098 IN ITS ASSAILED RESOLUTION DATED 27 AUGUST 2009 ON THE GROUND OF FAILURE TO PROSECUTE. 

- III. THE COURT OF TAX APPEALS COMMITTED A REVERSIBLE ERROR EQUATING THE FAILURE OF THE DEPARTMENT OF JUSTICE TO ASSIGN/DESIGNATE A PUBLIC PROSECUTOR OR SUBSTITUTE OF PROSECUTOR ROHAIRA TAMANO TO CTA CASE NO. O-098 AS FAILURE TO PROSECUTE OR LACK OF INTEREST TO PROSECUTE THE SAID CASE.

This Court's Ruling

The petition for review is denied.

In their Memorandum, the counsel for respondents Tim Brando Ratilla and Jennylyn Biado states that the petitioner filed the petition beyond the reglementary period. The counsel alleges that record shows that on January 15, 2010 both the Department of Justice (DOJ) and the Bureau of Customs (BOC) received their respective copies of the Resolution dated January 5, 2010 and this is proven and confirmed by the Certification issued by the Executive Clerk of Court III of the CTA First Division stating that both the DOJ and the BOC received the assailed Resolution on January 15, 2010. The counsel then concludes that the fifteen-day period within which to file the petition ended on January 30, 2010. However, since that date fell on a Saturday, the last date for filing the petition was the next working day, February 1, 2010 (Monday).

We agree with respondents Tim Brando Ratilla and Jennylyn Biado.

In the case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*²², the Supreme Court ruled that perfection of an appeal in the manner and within the period laid down by law is not only 

²² G.R. No. 167606, August 11, 2010.

mandatory but also jurisdictional, pertinent portion of this case is quoted hereunder, as follows:

"It has been ruled that **perfection of an appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law."

The period to appeal in the CTA *En Banc* is provided in Section 9(b), Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended, reads as follows:

SEC. 9. *Appeal; period to appeal.*—

xxx xxx xxx

(b) **An appeal to the Court *en banc* in criminal cases** decided by the Court in Division **shall be taken by filing a petition for review** as provided in Rule 43 of the Rules of Court **within fifteen days from receipt of a copy of the decision or resolution appealed from**. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days. (*Emphasis Supplied.*)

Based on the foregoing provision, an appeal to the Court *En Banc* in criminal cases shall be taken by filing a petition for review within fifteen days from receipt of a copy of the decision or resolution appealed from. However, for good cause, the time for filing the petition may be extended for an additional period not exceeding fifteen days. Clearly, the period for filing is mandatory unless good cause is shown. 

In this case, upon review of the records, We noted that the January 5, 2010 Resolution was received by the DOJ and the BOC on January 15, 2010²³. The period for filing an appeal is fifteen days from January 15 or until January 30, 2010 which fell on a Saturday. If the last day of the period, as thus computed falls on a Saturday, the time shall not run until the next working day, as provided in the second sentence of Section 1, Rule 22 of the Rules of Court, as follows :

SECTION 1. *How to compute time.*— xxx xxx xxx If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day. (n)

Considering that January 30, 2010 fell on a Saturday, the last day is on the next working day which is on Monday, February 1, 2010. However, petitioner filed the petition for review in the CTA *En Banc* on February 2, 2010. Clearly, this appeal is filed out of time. In effect, petitioner has lost its right to appeal the assailed Resolutions dated August 27, 2009 and January 5, 2010, respectively.

It is noteworthy to mention that CTA Criminal Case No. O-098, which is for review in this *En Banc* case, was dismissed after issuance of warrant of arrest for respondents Allan Francisco, Bobby Garcia, Tim Brando Ratilla, and Jennylyn Biado and eventually after the issuance of alias warrant of arrest for Tim Brando Ratilla and for Jennylyn Biado and after the filing of their counsel, by way of special appearance, of the "Motion for Judicial Redetermination of Probable Cause" for respondents Tim Brando Ratilla, and Jennylyn Biado. The CTA First 

²³ Division Docket, p. 199.

Division dismissed the case when petitioner failed to comply with the lawful orders of this Court.

Settled is the rule that jurisdiction over the person of the accused is acquired upon his arrest or voluntary appearance.²⁴

In this case, respondents Allan Francisco and Bobby Garcia have not yet been arrested nor voluntarily appeared before the Court. Although respondents Tim Brando Ratilla, and Jennylyn Biado were not yet arrested, they, however, filed a pleading seeking for affirmative relief which constitutes voluntary appearance. As a general rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court.²⁵

Once a complaint or information is filed in Court, any disposition of the case as its dismissal or the conviction or acquittal rests in the sound discretion of the Court.²⁶ Every court has the power to enforce and compel obedience to its orders, judgments, and processes in all proceedings pending before it.²⁷

In this case, petitioner failed to comply with the two (2) lawful orders of the CTA First Division, namely, (1) the December 2, 2008 Resolution, and (2) the June 1, 2009 Resolution. We quote pertinent portion of the January 5, 2010 Resolution as follows: 

²⁴ *People vs. Pangilinan*, G.R.No. 171020, March 14, 2007, 518 SCRA 358, 371 citing *Miranda vs. Tuliao*, G.R. No. 158763, March 31, 2006, 486 SCRA 377, 389; *Alva vs. Court of Appeals*, G.R. No. 157331, April 12, 2006, 487 SCRA 146, 169.

²⁵ *Miranda vs. Tuliao*, G.R. 158763, March 31, 2006, 486 SCRA 377, 391.

²⁶ *Flores vs. Gonzalez*, G.R. No. 188197, August 3, 2010, 626 SCRA 661, 671 citing *Crespo vs. Mogul*, L-53373, June 30, 1987, 235 Phil. 465, 476.

²⁷ *Vicoy vs. People*, G.R. No. 138203, July 3, 2002, 383 SCRA 707, 710 citing the Rules of Court, Rule 135, Section 5.

The pending Motion referred to by the plaintiff is the "Motion for Judicial Redetermination of Probable Cause" filed by the counsels of accused-TIM BRANDO RATILLA and JENNYLYN BIADO on May 5, 2009. However, as shown in the above discussion, the prosecution had knowledge of the Court's order to name the substitute Public Prosecutor as early as December 9, 2009²⁸. Thus, almost five (5) months had elapsed for the prosecution to comply with the Court's order before the said Motion was filed with the Court. The prosecution cannot use as an excuse the filing and pendency of the accused's motion before they start to comply with the Court's order and prosecute the instant criminal case.

Further, the Court reiterated its order for the plaintiff to comply with its December 2, 2008 Resolution in a Resolution²⁹ promulgated on June 1, 2009. The prosecution was given a final and non-extendible period of ten (10) days from receipt thereof within which to name the substitute Public Prosecutor. And as borne by the records of this case, the June 1, 2009 Resolution was received by the BOC and DOJ Prosecution Staff, Docket Section on June 8, 2009³⁰. In the same Resolution, the prosecution was also ordered to file its comment/opposition on the accused's motion. **For the second time, no compliance was made by the plaintiff with respect to the lawful orders of this Court.** This inaction on the part of the prosecution only shows the lack of interest of the plaintiff to prosecute the criminal case against herein accused. (*Emphasis Supplied*)

We, thus, find that the former CTA First Division did not abuse its discretion in dismissing the case for failure to prosecute.

Based on the foregoing discussions, the Resolutions of the CTA First Division dated August 27, 2009 and January 5, 2010 are hereby AFFIRMED.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for having been filed late.

SO ORDERED.

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

²⁸ Should be December 9, 2008, Division Docket, p. 144.
²⁹ Division Docket, pp. 171-172.
³⁰ Division Docket, p. 170.

WE CONCUR:

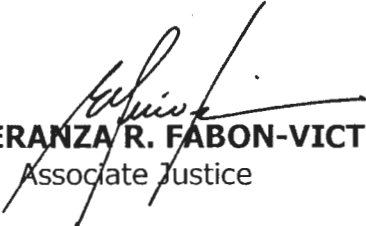

ERNESTO D. ACOSTA
Presiding Justice


LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
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

CERTIFICATION

Pursuant to Section 13, Article VIII 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