REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PTT PHILIPPINES TRADING CORPORATION, Petitioner,	**CTA EB No. 852** **(CTA Case No. 7981)**
	Present:
- versus -	**DEL ROSARIO,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF CUSTOMS, Respondent.	**Promulgated:** JUN 17 2013 1:50 p.m.

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DECISION

UY, *J*.:

This is a Petition for Review filed by petitioner PTT Philippines Trading Corporation against respondent Commissioner of Customs, praying for the reversal and setting aside, for lack of merit, of the Resolution dated July 4, 2011,[1] granting said respondent's Motion to Dismiss, and the Resolution dated December 14, 2011,[2] denying petitioner's Motion for Reconsideration and affirming the former Resolution, both rendered by the Third Division of this Court,[3] the respective dispositive portion of which reads:

Resolution dated July 4, 2011

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[1] Docket, pp. 43 to 49.
[2] Docket, pp. 51 to 53.
[3] The Third Division of this Court was then composed of the following: Associate Justice Lovell R. Bautista, as Chairperson, and Associate Justices Olga Palanca-Enriquez (Retired) and Amelia R. Cotangco-Manalastas, as Members.

"**WHEREFORE,** premises considered, respondent Commissioner of Customs' '**Motion to Dismiss**' is hereby **GRANTED** and the instant '**Petition for Review**' is hereby **DISMISSED**.

SO ORDERED."

Resolution dated December 14, 2011[4]

"**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner 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, and is registered with the Subic Bay Metropolitan Authority (SBMA). It is primarily engaged in the business of petroleum products terminalling, storage, distribution and pipeline throughput operations from Subic Bay to Clark Special Economic Zone and subleasing activity.[5]

Respondent Commissioner of Customs is the head of the Bureau of Customs (BOC), a government agency under the Department of Finance, principally tasked, *inter alia*, to collect custom duties, taxes and the corresponding fees, charges and penalties; to exercise police authority for the enforcement of tariff and customs laws; and to prevent and suppress smuggling, pilferage and all other economic frauds within all ports of entry.[6]

On November 23, 2006, respondent issued Mission Order No. 018-2006, creating a Special Audit Team consisting of the following Customs personnel: (1) Ernesto P. Pineda, Supervising Auditor; (2) Ferdinand A. Balina, Member; and (3) Rico E. Reyes, Jr., Member.[7] Five (5) days thereafter (*i.e.*, on November 28, 2006), Armand C.

[4] In this Resolution, Associate Justice Lovell R. Bautista entered his Dissenting Opinion.
[5] Par. 20, Petition for Review (CTA Case No. 7981), Division Docket (CTA Case No. 7981), p. 6.
[6] Section 23, Chapter 4 (Bureaus), Title II (Finance), Book III (Office of the President), Executive Order No. 292, series of 1987 (Also known as the "Administrative Code of 1987").
[7] Par. 1, Joint Stipulations of Facts and Issues (JSFI), Division Docket (CTA Case No. 7981), pp. 298 to 299.

Arreza, Administrator and Chief Executive Officer (CEO) of the SBMA, issued a letter of authority for the conduct of post entry audit of all importations, inventory and sales transactions of petitioner.[8] Eventually, a Joint Audit Team was formed between the BOC and the SBMA.

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. The amount of ₱470,725,577.00 corresponds to assessed duties and taxes, while the remaining ₱3,765,804,606.00 corresponds to the penalties imposed.[9]

On August 3, 2007, petitioner sent a letter to respondent, requesting a reconsideration or reinvestigation of the SBMA-BOC Joint Audit Team's conclusions and recommendations.[10]

Subsequently, on October 2, 2007, petitioner paid under protest to the BOC the amount of ₱117,681,394.00.[11]

However, on November 7, 2007, respondent wrote a letter addressed to the CEO of petitioner, finally demanding the settlement of the alleged deficiency assessment of basic duties, taxes and penalties.[12]

On November 20, 2007, petitioner filed a petition for review with this Court, assailing respondent's demand to pay the assessed duties, taxes and penalties. The case was docketed as CTA Case No. 7707 entitled *"PTT Philippines Trading Corporation, Petitioner, versus Commissioner of Customs and The Subic Bay Metropolitan Authority, Respondents"*, and was raffled to the Second Division of this Court.[13] In the said petition for review, petitioner prayed as follows:

> "WHEREFORE, in view of the foregoing premises, Petitioner respectfully prays that:
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> 1. Upon filing and raffle of the Petition, the Honorable Court issue *ex parte* a temporary restraining

[8] Par. 2, JSFI, Division Docket (CTA Case No. 7981), p. 299.
[9] Par. 3, JSFI, Division Docket (CTA Case No. 7981), p. 299.
[10] Par. 4, JSFI, Division Docket (CTA Case No. 7981), p. 299.
[11] Par. 5, JSFI, Division Docket (CTA Case No. 7981), p. 300.
[12] Par. 6, JSFI, Division Docket (CTA Case No. 7981), p. 300.
[13] Par. 7, JSFI, Division Docket (CTA Case No. 7981), p. 300.

order enjoining Respondent Commissioner of Customs and any of his authorized representatives from implementing the provisions of Section 1508 of the Tariff and Customs Code, including the holding of Petitioner's importations and consignments, and directing Respondent SBMA to refrain from implementing its directive suspending Petitioner's Certificate of Registration and Tax Exemption, or otherwise to allow Petitioner to resume its operation under its Certificate of Registration and Tax Exemption.

2. After due hearing, that writs of preliminary prohibitory and/or mandatory injunction be issued enjoining such acts pending the trial of the case;

3. After trial, that judgment be rendered as follows:

a. CANCELLING AND DECLARING NULL AND VOID the assessment for and final demand for the payment of Four Billion Two Hundred Thirty-Six Million Five Hundred Thirty One Thousand One Hundred Ninety-Three Pesos (Php4,236,530,193.00), of which said amount of One Hundred Seventeen Million Six Hundred Eighty-One Thousand Three Hundred Ninety-Four Pesos (Php117,681,394.00) has been partially paid, leaving a net assessment of Four Billion One Hundred Eighteen Million Eight Hundred Forty-Eight Thousand Seven Hundred Ninety-Nine Pesos (Php4,118,848,799.00);

b. Making PERMANENT the temporary restraining order/writs of preliminary injunction against respondents;

c. Directing Respondent Commissioner to REFUND to Petitioner the deposit of One Hundred Seventeen Million Six Hundred Eighty-One Thousand Three Hundred Ninety-Four Pesos (Php117,681,394.00).

Petitioner prays for such further or other relief as may be deemed just or equitable."[14]

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[14] Division Docket (CTA Case No. 7981), pp. 40 to 41.

During the pendency of CTA Case No. 7707, petitioner filed, on September 30, 2009, another petition for review docketed as CTA Case No. 7981 entitled *"PTT Philippines Trading Corporation, Petitioner, versus Commissioner of Customs, Respondent"*, praying as follows:

> "WHEREFORE, in view of the foregoing premises, Petitioner respectfully prays that, after trial, judgment be rendered directing Respondent Commissioner to REFUND to Petitioner the amount of One Hundred Seventeen Million Six Hundred Eighty One Thousand Three Hundred and Ninety Four Pesos (Php117,681,394.00), representing erroneously paid taxes and customs duties.
>
> Petitioner prays for such further or other relief as may be deemed just or equitable."[15]

CTA Case No. 7981 was raffled to the Third Division of this Court.

On March 29, 2011, respondent filed, in CTA Case No. 7981, a Motion to Dismiss,[16] upon the following grounds, viz:

1. The assailed letters demanding petitioner to pay the assessed duties, taxes and penalties conformably with the finding of the Joint Audit Team had long become final and executory; and
2. Petitioner is guilty of forum shopping; hence, the present petition must be summarily dismissed.

Through its Resolution dated April 4, 2011,[17] the Third Division of this Court ordered petitioner to comment on the said Motion to Dismiss. In compliance thereto, petitioner filed an Opposition to Motion to Dismiss[18] on April 19, 2011.

Subsequently, the Third Division of this Court rendered the assailed Resolution dated July 4, 2011,[19] the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, respondent Commissioner of Customs' '**Motion to Dismiss**' is hereby

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[15] Division Docket (CTA Case No. 7981), p. 36.
[16] Division Docket (CTA Case No. 7981), pp. 351 to 366.
[17] Division Docket (CTA Case No. 7981), p. 469.
[18] Division Docket (CTA Case No. 7981), pp. 470 to 492.
[19] Docket, pp. 43 to 49; Division Docket (CTA Case No. 7981), pp. 494 to 500.

GRANTED and the instant '**Petition for Review**' is hereby **DISMISSED**.

SO ORDERED."

Petitioner then filed a Motion for Reconsideration[20] on July 22, 2011, praying for the reversal and setting aside of the said assailed Resolution. Subsequently, respondent filed, on September 23, 2011, its Comment,[21] praying that the said Motion be denied for being *pro forma* and for lack of merit.

Thereafter, the Third Division of this Court promulgated the assailed Resolution dated December 14, 2011,[22] the dispositive portion of which states:

> "**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

On January 2, 2012, petitioner filed before the Court *En Banc* a Motion for Extension of Time To File Petition for Review,[23] praying that it be granted an extension of fifteen (15) days from January 3, 2012, or until January 18, 2012, within which to file its Petition for Review.

The Court *En Banc* granted the said Motion and gave petitioner the period prayed for, which is final and non-extendible.[24]

On January 18, 2012, petitioner filed the instant Petition for Review.[25] Thereafter, the Court *En Banc* required respondent to file a comment thereto.[26]

Respondent filed his Comment on March 14, 2012.[27]

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[20] Division Docket (CTA Case No. 7981), pp. 501 to 522.
[21] Division Docket (CTA Case No. 7981), pp. 531 to 536.
[22] Docket, pp. 51 to 53; Division Docket (CTA Case No. 7981), pp. 539 to 541.
[23] Docket, pp. 1 to 4.
[24] Docket, p. 5.
[25] Docket, pp. 6 to 38.
[26] Resolution dated February 6, 2012, Docket, pp. 237 to 238.
[27] Docket, pp. 244 to 281.

Per the Court *En Banc*'s Resolution dated March 29, 2012,[28] the parties were ordered to file their respective memorandum within thirty (30) days from notice.

On May 10, 2012, respondent filed his Memorandum.[29]

On May 10, 2012, however, petitioner filed a Motion for Extension of Time To File Memorandum.[30] The Court *En Banc* then issued the Resolution dated May 15, 2012,[31] granting the said Motion, and giving respondent a final and non-extendible period of ten (10) days from May 10, 2012 or until May 25, 2012.

On May 25, 2012, petitioner filed its Memorandum.[32]

Considering the filing of the respective memorandum of the parties, the Court *En Banc* deemed the case submitted for decision as of June 20, 2012.[33]

Hence, this Decision.

THE ISSUES

In the instant Petition for Review, petitioner raises the following issues for the Court *En Banc*'s resolution, to wit:

"I.

Whether the Third Division erred in concluding that the Final [Second] Demand Letter dated 7 November 2007 had already become final and executory, in view of the elevation by petitioner of the assessment to the Court of Tax Appeals by way of a Petition for Review, which was docketed as CTA Case No. 7707, on 20 November 2007.

II.

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[28] Docket, pp. 330 to 331.
[29] Docket, pp. 334 to 370.
[30] Docket, pp. 372 to 374.
[31] Docket, p. 375.
[32] Docket, pp. 376 to 416.
[33] Resolution dated June 20, 2012, Docket, pp. 418 to 419.

Whether the Third Division erred in agreeing with Respondent that Petitioner was guilty of forum shopping.

III.

Whether the Final [Second] Demand letter dated 7 November 2007 is a void assessment as it fails to expressly lay down the legal and factual basis of the amount being taxed."[34]

Petitioner's arguments:

Petitioner argues that the Third Division of this Court erred in concluding that the Second Demand Letter dated November 7, 2007 had already become final and executory, because petitioner elevated the assessment to this Court by way of a Petition for Review docketed as CTA Case No. 7707, on November 20, 2007. Petitioner is of the view that the filing of CTA Case No. 7707 was done well within the thirty (30)-day reglementary period provided for in Section 9 of Republic Act No. (RA) 9282.

Furthermore, petitioner contends that the Third Division of this Court erred in agreeing with respondent that petitioner was guilty of forum shopping. According to petitioner, there was no forum shopping because CTA Case Nos. 7707, 7981, 8002 and 8023 pertain to separate causes of action.

Lastly, petitioner asserts that the Second Demand Letter dated November 7, 2007 is an assessment bereft of factual and legal basis. In this connection, petitioner emphasizes that it is a basic tenet of taxation that an assessment that does not expressly lay down the legal and factual basis of the amount being taxed is a void assessment that should not be imposed upon the taxpayer.

Respondent's counter-arguments:

Respondent insists that the assailed letters of respondent demanding petitioner to pay the assessed duties, taxes and penalties had long become final and executory. He particularly points out that petitioner admits that it received a copy of the assailed final demand letter dated November 7, 2007 on November 12, 2007. Petitioner,

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[34] Docket, p. 15.

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however, filed the petition below assailing the subject final demand letter only on September 30, 2009, or almost two (2) years from the time of the said receipt. Thus, according to respondent, the petition below was filed way beyond the reglementary period of thirty (30) days within which to appeal the said final demand letter as required by law. Perforce, the Third Division of this Court correctly dismissed the petition below on the ground that the assailed final demand letter had become final and executory.

Moreover, respondent claims that petitioner is guilty of forum shopping; hence, the Third Division of this Court correctly dismissed the petition below.

THE COURT *EN BANC*'S RULING

We deny the instant Petition for Review.

The Demand Letter dated November 7, 2007 has <u>not</u> become final and executory.

Sections 7(a)(4) and 11 of RA 1125,[35] as amended by RA 9282,[36] provide:

> "SEC. 7. *Jurisdiction.*— The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (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;" *(Emphases supplied)*

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[35] AN ACT CREATING THE COURT OF TAX APPEALS.

[36] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> "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.
>
> **Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. **A Division of the CTA shall hear the appeal**: xxx." *(Emphases supplied)*

The foregoing provisions, in express terms, allow appeal from the "decision or ruling" of the Commissioner of Customs. And, in computing the 30-day period for appeal to this Court, counting should begin from the date of receipt of the decision of the Commissioner.

Considering the substance of the letter dated November 7, 2007 of the respondent Commissioner, it is evident that the said letter constitutes his appealable decision or ruling under the aforequoted Sections 7 and 11, since it has the unmistakable tenor of finality.

For easy reference, quoted hereunder is respondent Commissioner's letter dated November 7, 2007,[37] viz:

"07 November 2007

THE CHIEF EXECUTIVE OFFICER
PTT Philippines Trading Corporation
Subic Bay Metropolitan Authority

DEMAND LETTER

Gentlemen!

[37] Division Docket (CTA Case No. 7707), p. 368.

This is to formalize our final demand for your company to pay the total discrepancy assessment of basic duties and taxes amounting to **Php 470,725,577.00** and the corresponding penalties thereof in the amount of **Php 3,765,804,616.00**.

In view hereof, you are hereby given until the **15th** day of November 2007, to effect payment, otherwise, we shall be constrained to implement the provisions of Section 1508. of the Tariff and Customs Code of the Philippines, as amended, particularly the authority of this Bureau to hold delivery of any article imported or consigned to the delinquent importer, unless the said importer settles its obligation with the Bureau of Customs.

For your information and guidance.

(signed)
NAPOLEON L. MORALES
Commissioner"
(Underscoring supplied)

Thus, since the said letter was allegedly received by petitioner on November 12, 2007,[38] the petition for review questioning the assessment, which was docketed as CTA Case No. 7707, was timely filed on November 20, 2007. Having perfected the appeal before this Court within the 30-day reglementary period under the law, the letter dated November 7, 2007 has not become final and executory.

Be that as it may, the dismissal of the Court *a quo* of CTA Case No. 7981 is warranted.

Petitioner is guilty of forum shopping.

Petitioner argues that there was no forum shopping because the subject cases pertain to separate causes of action.

We do not agree.

There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*. Forum-shopping exists when two or more actions

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[38] Par. 43, Petition for Review (CTA Case No. 7707), Division Docket (CTA Case No. 7707), p. 12; Par. 44, Petition for Review (CTA Case No. 7981), Division Docket (CTA Case No. 7981), p. 12.

involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues. Still another test of forum-shopping is when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another – whether in the two or more pending cases, there is an identity of (a) parties (or at least such parties as represent the same interests in both actions), (b) rights or causes of action, and (c) reliefs sought.[39]

Thus, to determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. Otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[40]

Undoubtedly, there is identity of parties in CTA Case No. 7707 and CTA Case No. 7981.

Furthermore, forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[41]

Common in these types of forum shopping is the identity of the cause of action in the different cases filed. Parenthetically, cause of action is defined as "the act or omission by which a party violates the right of another."[42]

A comparison of the causes of action in CTA Case No. 7707 and CTA Case No. 7981 would readily reveal that there was forum shopping.

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[39] *Polanco, et al. vs. Cruz, et al.*, G.R. No. 182426, February 13, 2009.
[40] *Young vs. Seng*, G.R. No. 143464, March 5, 2003.
[41] *Asia United Bank, et al. vs. Goodland Company, Inc.*, G.R. No. 191388, March 9, 2011.
[42] *Id.*

The relief sought in the said cases respectively provides as follows:

CTA Case No. 7707	CTA Case No. 7981
"WHEREFORE, in view of the foregoing premises, Petitioner respectfully prays that: 1. Upon filing and raffle of the Petition, the Honorable Court issue *ex parte* a temporary restraining order enjoining Respondent Commissioner of Customs and any of his authorized representatives from implementing the provisions of Section 1508 of the Tariff and Customs Code, including the holding of Petitioner's importations and consignments, and directing Respondent SBMA to refrain from implementing its directive suspending Petitioner's Certificate of Registration and Tax Exemption, or otherwise to allow Petitioner to resume its operation under its Certificate of Registration and Tax Exemption. 2. After due hearing, that writs of preliminary prohibitory and/or mandatory injunction be issued enjoining such acts pending the trial of the case; 3. After trial, that judgment be rendered as follows: a. CANCELLING AND DECLARING NULL AND VOID the assessment for and final demand for the payment of Four Billion Two Hundred Thirty-Six Million Five Hundred Thirty One Thousand One Hundred Ninety-Three Pesos (Php4,236,530,193.00), of which said amount of One Hundred Seventeen Million Six Hundred Eighty-One Thousand Three Hundred Ninety-Four Pesos (Php117,681,394.00) has been partially paid, leaving a net assessment of Four Billion One Hundred Eighteen Million Eight Hundred Forty-Eight Thousand Seven Hundred Ninety-Nine Pesos	"WHEREFORE, in view of the foregoing premises, **Petitioner respectfully prays that, after trial, judgment be rendered directing Respondent Commissioner to <u>REFUND</u> to Petitioner the amount of One Hundred Seventeen Million Six Hundred Eighty One Thousand Three Hundred and Ninety Four Pesos (<u>Php117,681,394.00</u>), representing erroneously paid taxes and customs duties.** Petitioner prays for such further or other relief as may be deemed just or equitable."[43] *(Emphasis and underscoring supplied)*

[43] Division Docket (CTA Case No. 7981), p. 36.

(Php4,118,848,799.00); b. Making PERMANENT the temporary restraining order/writs of preliminary injunction against respondents; c. **Directing Respondent Commissioner to <u>REFUND</u> to Petitioner the deposit of One Hundred Seventeen Million Six Hundred Eighty-One Thousand Three Hundred Ninety-Four Pesos (<u>Php117,681,394.00</u>).** Petitioner prays for such further or other relief as may be deemed just or equitable."	

The cause of action in CTA Case No. 7707 is the alleged nullity of the BOC's assessment and final demand of the deficiency basic duties, taxes and penalties in the total amount ₱4,236,530,193.00 (of which ₱117,681,394.00 was paid by petitioner) which is allegedly violative of petitioner's right to administrative due process. It provides as the basis for the prayer of nullification of the said assessment and final demand of the deficiency basic duties, taxes and penalties, as well as the demand for the refund of the amount already paid, *i.e.*, the said ₱117,681,394.00. CTA Case No. 7981 entails the same cause of action, inasmuch as it also raises the nullity of the same assessment and final demand as the basis for petitioner's prayer of judgment for the refund of the said ₱117,681,394.00.

While the relief sought in CTA Case No. 7707 seem to be more than the relief sought in CTA Case No. 7981, the cause of action which serves as the foundation for the said reliefs remains the same – the alleged nullity of the said assessment and final demand of the deficiency basic duties, taxes and penalties.

Hence, what is involved in this case is the first way of committing forum shopping, *i.e.*, petitioner's act of subsequently filing multiple cases (CTA Case Nos. 7981, 8002 and 8023) based on the same cause of action and with the same prayer, while the first case (CTA Case No. 7707) has not yet been resolved, or still pending with one of the Divisions of the CTA.

Plainly, the Third Division of this Court cannot decide CTA Case No. 7981 without ruling on the validity of the said BOC's assessment and final demand of the deficiency basic duties, taxes and penalties, which is already within the jurisdiction of the Second Division of this Court in CTA Case No. 7707.

The identity of the causes of action in CTA Case No. 7707 and CTA Case No. 7981 entails a ruling on the validity of the BOC's assessment and final demand of the deficiency basic duties, taxes and penalties in the total amount ₱4,236,530,193.00 in bith cases, and brings about a likelihood that the two rulings might not be consistent with each other. This is evil that is sought to be prevented by the rule against forum shopping.

In light of the foregoing, We find petitioner guilty of forum shopping, and therefore, the Third Division of this Court correctly dismissed CTA Case No. 7981 upon such ground.

The issue of whether the Final [Second] Demand Letter dated November 7, 2007 is a void assessment should not be resolved in this proceeding.

In view of the proper dismissal of CTA Case No. 7981, the Court *En Banc* shall not delve into the validity of the subject assessment and final demand.

It must be remembered that Our jurisdiction over the instant case is merely appellate. Needless to state, appellate jurisdiction is the authority of a Court higher in rank to reexamine the final order or judgment of a lower Court which tried the case now elevated for judicial review.[44] Considering that the issue regarding the validity of the subject assessment was not addressed in the assailed Resolutions of the Court in Division, there is no final order or judgment thereon which may be the proper subject of the Court *En Banc*'s review.

WHEREFORE, in view of the foregoing considerations, the instant Petition for Review is hereby **DENIED**. The assailed Resolutions dated July 4, 2011 and December 14, 2011, both rendered by the Third Division of this Court in CTA Case No. 7981 are hereby **AFFIRMED** in toto.

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[44] *Garcia, et al. vs. De Jesus, et al., etseq.*, G.R. Nos. 88158 and 97108-09, March 4, 1992, citing Remedial Law Compendium, Regalado, Florenz D., Fifth Revised Edition, Vol. 1, p. 3.

SO ORDERED.

Erlinda P. Uy
ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(I maintain my Dissenting Opinion dated December 14, 2011)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice