REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner,	**CTA EB CRIM. NO. 061** (CTA CRIM. CASE NOS. O-589 & O-590)
	Present:
-versus-	Del Rosario, *P.J.,* Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *J.J.*
HERNANE A. AYON, (Purok 4, Lumbo, Valencia City, Bukidnon and/or P-12 Malingon, Bagontaas, Valencia City, Bukidnon) Respondent.	**Promulgated:** JUN 10 2019 1:42 p.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

For resolution is petitioner's Motion for Reconsideration (Of The Resolution dated February 07, 2019)[1] with respondent's Comment / Opposition to the Petitioner's Motion for Reconsideration.[2] The motion seeks reconsideration of the Court's Resolution dismissing the petition on the ground of forum shopping.[3]

Petitioner maintains that the Court committed reversible error when it declared that the rule against forum shopping was violated because the rights

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[1] *Rollo*, pp. 55-70.
[2] *Id.* at pp. 75-81.
[3] *Id.* at pp. 51-54.

asserted and reliefs prayed for in the Petition for Review with the Court and the Petition for Certiorari with the Supreme Court are *different*.[4] On the other hand, respondent reiterates that it is undeniable that the nullification of the September 18, 2018 Resolution of the Court's First Division by the Supreme Court would also resolve the civil aspect of the case. Thus, the decision of the Supreme Court on the Petition for Certiorari may constitute as *res judicata* on the issues now pending with this Court.

We agree with the respondent.

In the recent case of *Bureau of Customs v. The Honorable Agnes VST Devanadera, et al.*, the Supreme Court *En Banc* has summarized the rule on compliance with respect to the requirement on Verification and Certification against forum shopping:[5]

> "In *Traveño, et al. v. Bobongon Banana Growers Multi-Purpose Cooperative, et al.*, the Court restated the jurisprudence on non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:
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> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
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> 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
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> 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
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> 4) <u>As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of 'substantial compliance' or presence of 'special circumstances or compelling reasons.'</u>
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> 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

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[4] *Id.* at pp. 56-58.
[5] G.R. No. 193253, September 8, 2015.

> 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf." (*citations omitted and underscoring supplied*)

First, petitioner readily assigns error on the Court's conclusion of forum shopping and yet fails to explain why there was no disclosure at all about the pending Petition for Certiorari with the Supreme Court in the Certification. It only provides a clarification that the petition with the Supreme Court pertains to the *criminal* aspect of the case while the petition before this Court covers the *civil* aspect. That may be so but that does not lend any justification much less provide a compelling reason for the Court to overlook its *deficient* Certification and relax the rules. At the very least, petitioner should have informed the Court that, with respect to the criminal aspect of the case, a petition under Rule 65 was previously filed and is pending resolution. There was certainly no disclosure of the information required by the rules and the petitioner cannot even claim the mantle of substantial compliance thereof.

Accordingly, the Certification attached to the petition clearly suffers from an *omission* of a material fact. This defect, as discussed in the assailed February 7, 2019 Resolution, violates Section 2 of Rule 42 and Sections 6 and 7 of Rule 43 of the Rules of Court in relation to Sections 3(b) and 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) which provide in pertinent parts:

> **"RULE 42**
> **Petition for Review from the Regional Trial Courts to the Court of Appeals**
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> xxx xxx xxx
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> **Sec. 2.** *Form and contents.* — The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.
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> <u>The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any</u>

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> other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom. (n)
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> xxx xxx xxx
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> **RULE 43**
> **Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals**
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> xxx xxx xxx
>
> **Sec. 6.** *Contents of the petition.* --- The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein.
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> **Sec. 7.** *Effect of failure to comply with requirements.* --- The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof." (*underscoring supplied*)

Second, the test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[6] To determine whether a party violated the rule against forum shopping, it is

[6] *Lanao del Norte Electric Cooperative, Inc. v. Provincial Government of Lanao del Norte, et al.*, G.R. No. 185420. August 29, 2017.

crucial to ask whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another.[7]

At the very least, there is an evident *overlap* in the reliefs sought before the two fora now hearing the consolidated cases.

It will be recalled that the September 18, 2018 Resolution of the court *a quo* is the resolution which concluded that the petitioner failed to present competent and sufficient evidence to support a verdict of guilt.[8] It also decided the *civil aspect* of the case and held that petitioner failed to establish by preponderance of evidence that the respondent should be held civilly liable and, furthermore, declared that the assessments issued against him are void for violating his right to due process.[9] This is the same resolution which the petitioner is now asking the Court to reverse.[10]

The Petition for Certiorari was clear in the reliefs it sought from the Supreme Court:[11]

"**NATURE OF THE PETITION**

> 3. This is a Petition for Certiorari under Rule 65 of the Rules of Court seeking to set aside and nullify the Resolution dated September 18, 2018 (assailed judgment) issued by public respondent Court of Tax Appeals (CTA), First Division, in CTA Criminal Case Nos. O-589 & O-590 entitled 'People of the Philippines v. Hernane A. Ayon,' for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The assailed judgment granted respondent Hernane A. Ayon's Demurrer to Evidence and dismissed the charges against him for Violation of Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, due to insufficiency of evidence. The assailed decision also declared void the assessments issued by the BIR against respondent Ayon for taxable years 2010 and 2011 for violation of said respondent's right to due process."

These reliefs were repeated in the prayer of the petition:[12]

"**PRAYER**

> **WHEREFORE**, premises considered, petitioner respectfully prays of this Honorable Court that:
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> 1. the instant Petition for Certiorari be given due course; and

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[7] *Ignacio v. Office of the City Treasurer of Quezon City, et al.*, G.R. No. 221620. September 11, 2017.
[8] September 18, 2018 Resolution, *Rollo*, pp. 42-45.
[9] *Id.* at pp. 45-48.
[10] Petition for Review, *Rollo*, p. 19.
[11] Petition for Certiorari, Division Docket (Crim. Case No. O-589), Vol. II, p. 881.
[12] *Id.* at p. 913.

> 2. after proper proceedings, a Decision be rendered, NULLIFYING, and SETTING ASIDE, the Resolution dated September 18, 2018 rendered by public respondent in CTA Criminal Case Nos. O-589 & O-590.
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> Other forms of relief [sic], just and equitable under the premises are likewise prayed for.
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> Makati City for Manila, November 22, 2018." (underscoring supplied)

The petitioner also prayed for the following reliefs in the instant Petition for Review:

> "**PRAYER**
>
> WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court En Banc reverse [sic] the Honorable CTA First Division's Resolution promulgated on September 18, 2018 and the Resolution dated December 12, 2018, and judgement be rendered ordering the Respondent-Accused to pay:
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> 1) Deficiency income tax amounting to P2,628,833.94 for 2010 and P3,264,824.24 for 2011 exclusive of interest, surcharge, and/or penalty charges; and
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> 2) Penalties, surcharges, deficiency interest and delinquency interest until fully paid pursuant to Sections 248 and 249 of the NIRC of 1997.
>
> Other reliefs just and equitable under the premises are likewise prayed for.
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> Respectfully submitted.
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> Quezon City, January 7, 2018." (underscoring supplied)

A reading of these pleadings confirm the similarity or identity in the reliefs sought from the two fora.

More importantly, since the Petition for Certiorari raised issues which are relevant *not only* to the criminal aspect *but also* the civil aspect of the September 18, 2018 Resolution,[13] the decision of the Supreme Court thereon may constitute as *res judicata* on the issues raised before the CTA *En Banc*.

Specifically, the Petition for Certiorari questioned the findings of the court *a quo* with respect to the alleged undeclared sales to AG Global Pharma[14] which was the basis for granting respondent's Demurrer to Evidence. These findings were not only relevant in the court's determination

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[13] *Id.* at pp. 902-913.
[14] Par. 42-55, Petition for Certiorari, Division Docket (Crim. Case No. O-589), Vol. II, pp. 903-909.

of the criminal aspect[15] of the cases but also the civil aspect[16] as well. This is precisely among the issues raised anew in the instant Petition for Review.[17] Thus, assuming for the sake of argument that the Supreme Court grants the petition and nullify the September 18, 2018 Resolution, this would, in effect, resolve the *civil aspect* of the cases now pending with this Court and would bar the Court from further proceeding.

Accordingly, in view of the foregoing, the Motion for Reconsideration (Of The Resolution dated February 07, 2019) is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON- VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[15] September 18, 2018 Resolution, *Rollo*, p. 43.
[16] September 18, 2018 Resolution, *Rollo*, p. 48.
[17] Petition for Review, *Rollo*, pp. 9-10.

(On Leave)
MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice