REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

RUBILLS INTERNATIONAL, INC. and FIL HAUS ENTERPRISES, represented by LEANDRO ANTONIO TALAUE, Petitioners,	**C.T.A. E.B. NO. 471** **(C.T.A. CASE NO. 7782)** Present:
- versus -	**ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
CUSTOMS COMMISSIONER NAPOLEON L. MORALES, DISTRICT COLLECTOR HORACIO D. SUANSING, JR., ATTY. TRISTAN ARMANDO III F. LANGKAY, AND ATTY. ROGEL GATCHALIAN, Respondents.	**Promulgated:** JUL 29 2009

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on March 12, 2009 under Republic Act (RA) No. 1125, as amended by Republic Act (RA) No. 9282, and Section 2(a), Rule 4 of the Revised Rules of the Court of Tax Appeals, seeking a review of the Resolutions by the First Division of this Court (Court in Division)[1] which dismissed CTA Case No. 7782, entitled "Rubills International, Inc. and Fil Haus Enterprises, represented by Leandro Antonio P. Talaue, petitioners, vs. Customs

[1] Chaired by Presiding Justice Ernesto D. Acosta, with Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova as members.

Commissioner Napoleon L. Morales, District Collector Horacio D. Suansing, Jr., Atty. Tristan Armando III F. Langkay, Atty. Rogel Gatchalian, respondents", to wit:

1) Resolution promulgated on September 29, 2008[2] dismissing the case for lack of jurisdiction considering that petitioners' immediate resort to judicial action is unjustified as there is in fact an adequate and speedy remedy available to petitioner; and

2) Resolution promulgated on February 11, 2009[3] denying herein petitioner's Motion for Reconsideration of the aforesaid Resolution for being *pro forma*.

THE FACTS

Based on the records, the factual antecedents of the case are as follows:

Petitioners are Rubills International, Inc. and Fil Haus Enterprises, the former being a corporation duly organized and existing under the laws of the Republic of the Philippines, while the latter is a single proprietorship duly represented by Mr. Leandro Antonio Talaue, both with principal office at Room 603, S & L Building, 1500 Roxas Boulevard, Manila. Respondents, on the other hand, are Customs Commissioner Napoleon L. Morales, District Collector Horacio D. Suansing, Jr., Atty. Tristan Armando III F. Langkay, and Atty. Rogel Gatchalian.

On April 15, 2008, an Order was issued by the District Collector of the Port of Manila, Horacio D. Suansing, Jr., ordering the forfeiture in favor of the Government the subject importation shipments of flour by petitioners.[4]

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[2] Docket, pp. 21-25.
[3] Docket, pp. 27-28.
[4] Annex "E", Petition for Review, Docket, pp. 29-30.

On April 24, 2008, petitioners filed their "Motion for Reconsideration and/or Appeal"[5] of the said Order, but said motion for reconsideration was denied in another Order dated April 30, 2008 issued again by District Collector Horacio D. Suansing, Jr.[6]

On May 6, 2008, petitioners judicially appealed the aforesaid Orders issued by the Collector of Customs, through a Petition for Review[7], before the Court in Division, alleging further that the issuance of a Writ of Preliminary Injunction and/or grant of Temporary Restraining Order (TRO) is proper to prevent the auction sale of petitioners' subject shipments. On same date, summons[8] was issued requiring respondents to file their answer thereto.

During the hearing on May 16, 2008, the Court in Division ruled that the motion for the issuance of TRO has been rendered moot considering that the subject shipments were already sold at public auction. Consequently, the pre-trial conference was set on June 6, 2008, but was reset on July 4, 2008.

Answers were filed by respondents on May 23, 2008[9] and June 23, 2008[10], while pre-trial briefs of both parties were filed on June 26, 2008[11], June 27, 2008[12], and July 4, 2008[13].

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[5] Annex "F", Petition for Review, Docket, pp. 31-35.
[6] Annex "G", Petition for Review, Docket, pp. 36-38.
[7] Annex "K", Petition for Review, Docket, pp. 51-59.
[8] CTA Case No. 7782, Docket, p. 29.
[9] Answer with Counterclaim, Annex "L", Petition for Review, Docket, pp. 60-104; CTA Case No. 7782, Docket, pp. 37-83
[10] Answer, Annex "N", Petition for Review, Docket, pp. 112-125;CTA Case No. 7782, Docket, pp. 87-95.
[11] Petitioners' Pre-Trial Brief, Annex "M", Petition for Review, Docket, pp. 105-111; CTA Case No. 7782, Docket, pp. 96-129.
[12] Respondents' Pre-Trial Brief, Annex "O", Petition for Review, Docket, pp. 121-125; CTA Case No. 7782, Docket, pp. 150-155.
[13] Respondent Attorneys Gatchalian and Langkay's Pre-Trial Brief, Annex "P", Petition for Review, Docket, pp. 126-131; CTA Case No. 7782, Docket, pp. 143-149.

However, on July 24, 2008, respondents filed a Motion to Dismiss[14] on the ground that the Court of Tax Appeals (CTA) has no jurisdiction over the case as what is being judicially appealed are the subject assailed Orders issued by the District Collector of Customs, Port of Manila, and not by the Commissioner of Customs. As argued by respondents, Section 7(4) of Republic Act (RA) No. 1125, as amended by RA No. 9282, and Section 2313 of the Tariff and Customs Code of the Philippines (TCCP), conferring jurisdiction to the CTA do not include the power to review the orders or decisions of the Collector of Customs.

Upon consideration of petitioners' "Comment/Opposition (To Respondents' Motion to Dismiss)" dated August 8, 2008[15] and ""Rejoinder" dated September 1, 2008[16], and respondents' "Reply" dated August 15, 2008[17], the Court in Division issued the assailed Resolution dated September 29, 2008[18] granting respondents' motion. The Court explained that under Section 2313 of the TCCP, the action or decision of the Collector is subject to the review powers of the Commissioner of Customs. It concluded by stating that the doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence, such as the Commissioner of Customs.

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[14] Annex "R", Petition for Review, Docket, pp. 138-146; CTA Case No. 7782, Docket, pp. 165-173.
[15] Annex "S", Petition for Review, Docket, pp. 147-150; CTA Case No. 7782, Docket, pp. 176-179.
[16] Annex "U", Petition for Review, Docket, pp. 159-161; CTA Case No. 7782, Docket, pp. 189-192.
[17] Annex "T", Petition for Review, Docket, pp. 151-158; CTA Case No. 7782, Docket, pp. 181-188.
[18] Annex "C", Petition for Review, Docket, pp. 20-25.

Subsequently, in the assailed Resolution dated February 11, 2009[19], the Court in Division denied petitioners' Motion for Reconsideration of the Resolution dated September 29, 2008 for being *pro forma*.

Hence, this recourse before the Court *En Banc* praying that the assailed Resolutions dated September 29, 2008 and February 11, 2009 of the Court in Division be reversed and set aside; that the respondents be ordered to immediately release the subject shipments; and that if such release and restitution are no longer possible, respondents be ordered to solidarily pay petitioners the amount of at least P50,000,000.00, exclusive of interest.

In the Resolution dated March 25, 2009[20], the Court *En Banc* required petitioners to submit certified true copies/duplicate original copies of the assailed Resolutions, to present the Secretary Certificate authorizing a certain Leandro Antonio P. Talaue to act for and in behalf of both petitioners to appeal the subject Resolutions; while petitioner's counsel, Atty. Alentajan, was likewise ordered, by way of compliance, to indicate his MCLE Compliance number for the second compliance period, and the date the same was issued. Petitioners' filed their Compliance[21] thereto on April 13, 2009.

Thereafter, on April 24, 2009, this Court issued a Resolution[22] noting said compliance, admitting the pertinent documents as part of the records of the case, and requiring respondents to file a comment to the instant Petition for Review. Upon submission of respondents' Comment on June 8 2009,[23]

[19] Annex "D", Petition for Review, Docket, pp. 26-28.
[20] Docket, pp. 171-173.
[21] Docket, pp. 174-181.
[22] Docket, pp. 183-184.
[23] Docket, pp. 191-204.

this case was deemed submitted for decision in a Resolution dated June 15, 2009[24].

Hence, this Decision.

THE ISSUES

The issues raised by petitioner in the instant petition are as follows:

> "I
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> WHETHER OR NOT THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN DISMISSING THE PETITION.
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> II.
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> WHETHER OR NOT THE PETITIONERS VIOLATED ANY OF THE PROVISIONS OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES.
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> III.
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> WHETHER OR NOT THE RESPONDENTS SHOULD RELEASE THE SUBJECT SHIPMENTS TO THE PETITIONERS.
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> IV.
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> WHETHER OR NOT PETITIONERS ARE ENTITLED TO ACTUAL DAMAGES IN THE AMOUNT OF PHP55,000,000.00 IF RELEASE AND RESTITUTION ARE NO LONGER POSSIBLE."[25]

Petitioners' arguments

Petitioners submit the following arguments: "this case falls under the exception on exhaustion of administrative remedies; petitioners have been denied due process; judicial action is not inconsistent with Section 2313 of the Tariff and Customs Code; the petition falls under the exception to the doctrine of primary jurisdiction; and, this case falls under the exception on the exhaustion of administrative remedies.

According to petitioner, the Court of Tax Appeals has jurisdiction over the subject matter of this case under one of the exceptions to the rule on

[24] Docket, p. 206.
[25] Issues, Petition for Review, p. 8.

exhaustion of administrative remedies, and the doctrine of primary jurisdiction, wherein an irreparable injury or damage will be suffered by a party if he should await, before taking court action, the final action of the administrative official concerned on the matter as a result of a patently illegal order, or where appeal would not prove to be speedy and adequate remedy. Moreover, petitioners have allegedly been denied due process as the subject shipments have been auctioned without any prior notice to them, or a hearing for such purpose; hence, resort to the Commissioner of Customs would not be an adequate and speedy remedy. Lastly, petitioner argues that judicial action is not inconsistent with Section 2313 of the TCCP.

Respondents' counter-arguments

In respondents' Comment, they explain that the Court in Division correctly dismissed the petition for lack of jurisdiction as Section 7 of RA No. 9282 does not confer upon the Court of Tax Appeals the power to review orders or decisions of the Collector of Customs; otherwise, this would render the power of supervision and control of the Commissioner of Customs over Collector of Customs nugatory. Consequently, due to failure of petitioners to perfect an appeal, said orders of the Collector of Customs before the Commissioner of Customs in the manner and within the period fixed by law, the said orders/decisions became final and executory. Respondents' submit that petitioners were not deprived of their right to due process in the proceedings as this constitutional mandate is deemed satisfied if the pleader is granted an opportunity to seek reconsideration of the action or ruling complained of.

THE COURT EN BANC'S RULING

We shall first resolve the issue on the legality of the dismissal of the petition in CTA Case No. 7782 by the Court in Division.

A careful and closer look at the arguments set forth by the petitioners in the instant petition for review readily reveal that the grounds relied upon, more particularly on the issue of the dismissal of the case by reason of lack of jurisdiction over the assailed Orders dated April 15, 2008 and April 30, 2008, both issued by respondent Horacio Suansing, Jr., District Collector of Customs of the Port of Manila, are mere restatements of petitioners' previous arguments raised before the Court *a quo*. It is Our finding that these matters have already been exhaustively discussed and passed upon by the Court in Division in its assailed Resolution dated September 29, 2008 and correspondingly adhere to the factual and legal findings of the Court in Division in resolving respondents' Motion to Dismiss, to wit:

> "Section 2313 of the Tariff and Customs Code states:
>
> *SEC. 2313.* Review by Commissioner. – *The person aggrieved by the* ***decision or action*** *of the Collector in any matter presented upon protest or by his* ***action in any case of seizure*** *may,* ***within fifteen (15) days after notification in writing by the Collector of his action*** *or decision, give written notice to the Collector and one copy furnished to the Commissioner of his desire to have the matter reviewed by the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the* ***action*** *or decision of the collector and take such steps and make such orders as may be necessary to give effect to his decision.*
> (Emphasis supplied)
>
> It is clear from the foregoing that an 'action' of the Collector is subject to the <u>review powers of the Commissioner</u>, and that an aggrieved party may file a written notice invoking

such powers within fifteen (15) days after being notified of such 'action'. As the term 'action' is couched in general terms, it must necessarily include the act of 'auctioning', which in this case, was conducted by the Collector on the subject forfeited shipments of petitioners. Thus, petitioners cannot validly claim that there was no *'adequate and speedy remedy'* to justify their direct resort to this Court.

Neither was there violation of due process.

When the Collector of Customs issued an order of forfeiture of the subject shipments on April 15, 2008, petitioners immediately or on April 24, 2008 filed a Motion for Reconsideration and/or Appeal of such order. Acting on such Motion, the Collector denied the same through an Order dated April 30, 2008.

It has been held that the essence of due process in administrative proceedings is an opportunity to explain one's side OR an opportunity to seek reconsideration of the action or ruling complained of. Thus, denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.

There being no violation of due process, and finding that there is in fact an adequate and speedy remedy available to petitioner, the latter's immediate resort to judicial action is not justified.

Moreover, it is undoubted that fidelity to the basic concept of exhausting administrative remedies calls for the equally fundamental principle of primary jurisdiction to be respected.

The question of seizure and forfeiture is for the Collector to determine in the first instance and then the Commissioner. This is a field where the doctrine of primary jurisdiction controls. Thereafter, an appeal may be taken to this Court.

Under the sense-making and expeditious doctrine of primary jurisdiction, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and

> a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered.
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> In this era of clogged court dockets, the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters, subject to judicial review in case of grave abuse of discretion, has become well high indispensable.
>
> The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence."[26]

Apparently, from the foregoing conclusion judiciously arrived at by the Court in Division, petitioners' failure to administratively appeal the subject Orders of the Collector of Customs to the Commissioner of Customs, in accordance with the procedures laid down in Section 2313 of the TCCP, is fatal to their cause, rendering petitioners' judicial appeal through a Petition for Review before the Court of Tax Appeals premature.

Section 7(a)(4) of Republic Act (R.A.) No. 1125 (An Act Creating the Court of Tax Appeals), as amended by Republic Act (R.A.) No. 9282, provides the exclusive but limited appellate jurisdiction of this Court, insofar as decisions of the Commissioner of Customs are concerned, quoted hereunder as follows:

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

[26] Assailed Resolution dated September 29, 2008, pp. 2-5.

> (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;" *(Emphasis Ours)*

Moreover, Section 11 thereof clearly states:

> **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.
>
> xxx xxx xxx." *(Emphasis Ours)*

Thus, to properly invoke the jurisdiction of this Court, the **"*decisions*"** mentioned in the aforequoted legal provisions, must pertain to decisions of the Commissioner of Customs 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. Clearly therefore, the decision or order of the Collector of Customs, as such in this case, is not the decision contemplated in Section 7(a)(4) of R.A. No. 1125, as amended by R.A. No. 9282.

As a court of special appellate jurisdiction, it can only try cases permitted by statute.[27] Therefore, We are in accord with the Court in Division in dismissing the Petition for Review filed in CTA Case No. 7782, as it was left with no recourse but to do so for lack of jurisdiction. In this regard, it becomes unnecessary to resolve the other issues raised in this petition.

Correspondingly, We find no reversible error committed by the Court in Division that would merit a reversal of its assailed Resolutions dated September 29, 2008 and February 11, 2009.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[27] Moog Controls Corporation Philippine Branch vs. Commissioner of Internal Revenue, C.T.A EB No. 44 (C.T.A. Case No. 6700), May 10, 2005, with Entry of Judgment dated January 6, 2006.

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*.

ERNESTO D. ACOSTA
Presiding Justice