REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TRIUMPH INTERNATIONAL (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 595
(CTA Case No. 7947)

Present:

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

Promulgated: SEP 27 2010 10:00 a.m.

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DECISION

CASTAÑEDA, JR., J.:

For review are the Resolution dated October 5, 2009 dismissing the Petition for Review and denying Triumph International (Philippines), Inc.'s Urgent Application for the

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Issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction and the Resolution dated February 3, 2010, also denying its Motion for Reconsideration for lack of merit, both issued by the Court in Division in CTA Case No. 7947.

THE FACTS

Triumph International (Philippines), Inc. ("Petitioner") is a corporation duly organized and existing under and by virtue the laws of the Republic of the Philippines. Petitioner is engaged in the manufacturing, marketing and sale of women's intimate apparel.[1] On the other hand, the Commissioner of Internal Revenue ("Respondent") as a public official is tasked to decide disputed assessments, refund of erroneously or excessively paid internal revenue taxes, fees or other charges, penalties, or other matters under Republic Act (R.A.) No. 8424, or also known as the, "1997 National Internal Revenue Code" ("NIRC")" or other laws administered by the Bureau of Internal Revenue ("BIR").

In a Letter of Authority No. 00096142 dated April 27, 2006, respondent directed representatives from the Large Taxpayers District Office ("LTDO") in Makati to examine petitioner's books of accounts and its other accounting records for all internal revenue taxes for the calendar year 2004.[2]

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[1] Docket, CTA Case No. 7947, pp. 3 & 213.
[2] Docket, CTA Case No. 7947, pp. 4 & 213.

During investigation, petitioner signed a Waiver of Statute of Limitations notarized on September 17, 2007.[3]

On March 5, 2008, the BIR issued against petitioner a Preliminary Assessment Notice ("PAN") assessing deficiency income tax and value added tax ("VAT") deficiencies covering the calendar year 2004 in the cumulative amount of P319,912,118.35.[4]

On April 15, 2008, the petitioner received a Formal Letter of Demand with Assessment Notice Nos. LTDO 122-IT-2004-00010 and LTDO 122-VT-2004-00006 ("FANs") from respondent through Ms. Marissa O. Cabreros of the HREA, LTDO of Makati and Cebu finding it liable for 2004 income tax and VAT deficiencies in the amounts of P300,557,909.50 and P19,354,208.85, respectively, as follows:

Deficiency Income Tax
Assessment No. LTDO 122-IT-2004-00010

Basic Tax	P 187,848,693.44
Interest (Computed up to 4/15/08)	112,709,216.06
Amount Still Due	300,557,909.50

Deficiency Value Added Tax
Assessment No. LTDO 122-VT-2004-00006

Basic Tax	P 11,729,823.55
Interest (computed up to 4/15/08)	7,624,385.30
Amount Still Due	P 19,354,208.85[5]

[3] Docket, CTA Case No. 7947, pp. 4 & 213.
[4] Docket, CTA Case No. 7947, pp. 4, 5, 117 & 213.
[5] Docket, CTA Case No. 7947, pp. 5, 120-122 & 213.

In response to the FANs, petitioner through its Accounting Supervisor, Ms. Jaima L. Montes protested respondent's assessments on May 15, 2008.[6]

Dissatisfied with petitioner's explanation, respondent through Ms. Cabreros sent on November 27, 2008, a letter dated October 6, 2008 identified as "Re: FINAL DISPOSITION ON DISPUTED ASSESSMENT" demanding payment of its income tax and VAT deficiencies in the total amount of P319,912,118.35 for calendar year 2004.[7]

Respondent through LTDO OIC-Chief, Mr. Cesar D. Escalada reiterated petitioner's payment of its 2004 income and VAT liabilities as shown in the Collection Letter dated May 13, 2009.[8]

On June 19, 2009, the petitioner received from Mr. Escalada, the Final Notice Before Seizure dated June 15, 2009 reminding it to settle its tax liabilities within ten (10) days from receipt of the same.[9]

Meanwhile, respondent issued Warrants of Garnishment dated June 29, 2009 against Hongkong and Shanghai Banking Corporation and Union Bank of the Philippines by ordering these banks to transfer funds belonging to petitioner in satisfaction of its alleged tax liabilities.[10]

Unfazed, on July 20, 2009, petitioner sought redress with the Court in Division by filing a Petition for Review docketed as CTA Case No. 7947 with a prayer for the

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[6] Exhibit "1". Docket, CTA Case No. 7947, pp. 5, 213 & 222.
[7] Exhibit "3". Rollo, p. 6. Docket, CTA Case No. 7947, pp. 211, 214 & 224.
[8] Docket, CTA Case No. 7947, pp. 5 & 213.
[9] Annex "A". Docket, CTA Case No. 7947, pp. 5, 26 & 213.
[10] Docket, CTA Case No. 7947, pp. 5 & 213.

cancellation of the assessments, Final Notice Before Seizure and Warrants of Distraint, Levy and/or Garnishment.

In his Answer with Motion to Dismiss, respondent alleges that the Final Decision on Disputed Assessment dated October 6, 2008 is the decision appealable to the Court of Tax Appeals.[11] Petitioner failed to either seek a reconsideration of the decision rendered by respondent's authorized representative or avail of a timely appeal with the Court of Tax Appeals. The respondent also observed the following discrepancies against petitioner: a) gross profit on undeclared importation in the amount of P4,876,812.47; b) undeclared revenue in the amount of P89,680,916.64 per reconciliation of income per VAT returns in relation with its income per books; c) failure to subject the amount of P412,409,220.07 to expanded withholding tax ("EWT"), thus, a disallowed expense; d) overstatement of its salaries and wage expenses in the amount of P75,938,925.40; e) undeclared income due to under-declaration of expense of P21,560,200.51; f) unsubstantiated creditable tax withheld of P919,538.80 per reconciliation of the amounts encoded in the integrated tax system ("ITS") against its income tax return ("ITR"); g) undeclared sales on undeclared importation subject to VAT in the amount of P22,735,722.47; h)excessive claim of input tax on local purchases of P1,018,721.20 per reconciliation of its input tax on domestic purchases per VAT returns and its attached summary; i) disallowed claimed input taxes due to invalid TINs and purchases from non VAT suppliers; and j) excessive input VAT claimed on

[11] Docket, CTA Case No. 7947, p. 214.

importation in the amount of P1,185,149.00 per reconciliation of input tax on importation based on VAT returns against the submitted summary.[12]

Petitioner subsequently applied for the issuance of a Temporary Restraining Order ("TRO") and a Writ of Preliminary Injunction. However, on July 30, 2009, the Court in Division only granted the TRO effective for 60 days and enjoined respondent and his agents from enforcing and implementing the Warrant of Garnishment and Warrants of Distraint and Levy, relative to subject assessments.[13]

Both parties were eventually ordered to present their testimonial and documentary evidence for the Court in Division to decide whether to grant or deny petitioner's application for a Writ of Preliminary Injunction.

In the Resolution dated October 5, 2009, the Court in Division dismissed the Petition for Review for being filed out of time. Corollarily, it denied petitioner's application for a Writ of Preliminary Injunction.[14]

Acting upon petitioner's Motion for Reconsideration, the Court denied the same in the Resolution dated February 3, 2010.[15]

Undaunted, on February 25, 2010, petitioner appealed before the Court *En Banc.*

Respondent failed to file his Comment to the Petition for Review. *gr*

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[12] Docket, CTA Case No. 7947, pp. 213 -220.
[13] Docket, CTA Case No. 7947, pp. 167-168.
[14] Docket, CTA Case No. 7947, pp. 299-305. Penned by Associate Justice Lovell R.Bautista and concurred in by Associate Justice Caesar A. Casanova with concurring and dissenting opinion of Presiding Justice Ernesto D. Acosta.
[15] Docket, CTA Case No. 7947, pp. 421-426.

In accordance with the Court's Resolution dated May 20, 2010, only petitioner filed its Memorandum. Thereafter, the case was submitted for Decision.[16]

THE ISSUES

Petitioner raises the following errors committed by the Court in Division:

I

WHETHER OR NOT THE HONORABLE FIRST DIVISION COMMITTED GRAVE AND REVERSIBLE ERROR IN DENYING PETITIONER'S APPLICATION FOR PRELIMINARY INJUNCTION.

II

WHETHER OR NOT THE HONORABLE FIRST DIVISION COMMITTED GRAVE AND REVERSIBLE ERROR IN SUMMARILY DISMISSING THE PETITION WITH THE DENIAL OF THE APPLICATION FOR PRELIMINARY INJUNCTION ON THE GROUND THAT IT LACKS JURISDICTION TO RESOLVE THE SAME.

III

WHETHER OR NOT THE HONORABLE FIRST DIVISION COMMITTED GRAVE AND REVERSIBLE ERROR IN SUMMARILY DISMISSING THE PETITION WHEN THE ONLY ISSUE SUBMITTED FOR RESOLUTION IS PETITIONER'S APPLICATION FOR PRELIMINARY INJUNCTION.

IV

WHETHER OR NOT THE HONORABLE FIRST DIVISION COMMITTED GRAVE AND REVERSIBLE ERROR IN NOT FINDING THAT THE PETITION IS MERITORIOUS.[17]

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[16] Rollo, pp. 328 & 409.

According to petitioner, the Court in Division erred in ruling that it filed an appeal beyond the thirty (30) day period in violation of Section 228 of the 1997 NIRC. Petitioner's failure to file within the 30 day period is excusable and should have been relaxed in the interest of justice, especially in the light of the merits of the Petition.

Petitioner further alleges that the challenged assessments are void and produce no legal effect because the assessments are bereft of any factual or legal basis. Any act which is void does not exist in the eyes of the law. No rights may be conferred by it and no obligation may come out of it. In the same manner, any assessment that is void cannot be the source of any right, even for the Government. Since the assessments in the instant case are a nullity, any proceedings are likewise void, and any order emanating from them could never attain finality. Void assessments can be questioned at anytime. Here, considering that the assessments are void, the Court's garnishment of petitioner's bank accounts should be halted and the reglementary period to file an appeal should not be considered to have commenced.

Petitioner claims that respondent issued his Formal Letter of Demand and the FAN for VAT only on March 31, 2008, or more than three years from the last day of filing the VAT returns. While it is true that petitioner signed the Waiver of Statute of Limitations, the prescriptive periods for the assessment of the first and second quarters of taxable year 2004 for VAT had already prescribed.

[17]Rollo, pp. 12-13.

Petitioner argues that respondent erred in assessing it of income tax deficiency resulting from the alleged difference in income per VAT returns and income per books. Any difference may be due to variances in timing and accounting principles that are followed in reporting of income or sales in its VAT returns and income per books or financial statements.

Petitioner alleges that since it is not remiss in withholding appropriate taxes from its suppliers of goods and services, it cannot be liable for expanded withholding taxes ("EWT"). These expenses relate to importations which are not required under Philippine tax laws to be subject to EWT.

As reflected in Statements of Income and Financial Statements of the 2004 Audited Financial Statements, petitioner's purchases excluding direct labor and personnel costs in 2004 amounted to P1.08 billion. Out of the total purchases of P1.08 billion, only P634 million pertain to local purchases. The balance of P435 million constitutes importations or raw materials and finished goods exempt from EWT.

Respondent also erred in disallowing employee expenses in the amount of P75,938,925.40. He did not indicate in the Details of Discrepancies the basis for such disallowance. Petitioner surmises that the alleged discrepancy is also due to timing difference arising from accounting method. These employee-related expenses may pertain to non-compensation employee benefits which are also not subject to withholding tax on compensation. *jc*

Respondent likewise erred in disallowing creditable taxes withheld in the amount of P5,238.10 because this amount are prior years' creditable taxes carried over to apply against its 2004 income tax liabilities under Section 76 of the 1997 NIRC.

Petitioner maintains that the respondent has no factual or legal basis in disallowing creditable taxes withheld in the amount of P919,538.80 since its records reveal that the amounts in the ITR and ITS are equal.

Petitioner asserts that the First Division committed grave and reversible error in denying its application for preliminary injunction. The Court in Division failed to consider that if the garnishment of its bank accounts will not be enjoined, it will not be able to pay its separated employees and its remaining operations in the Philippines will be disrupted. Closure of some of petitioner's business areas in the country is a result of restructuring its operations due to global recession and downturn in consumer demand of its products. The damage suffered or to be suffered by the petitioner is incapable of pecuniary estimation. Should collection be pursued against it, petitioner would suffer closure or termination beyond the possibility of repair or beyond compensation.

The key issue on whether the assessments are void should be resolved in the main case on the merits. Courts should avoid issuing a writ of preliminary injunction which would in effect dispose the main case without trial.

THIS COURT'S RULING

It is necessary for the Court to resolve the second assignment of error before ruling on the other assignment of errors, specifically on the propriety of the issuance of the Writ of Preliminary Injunction.

The pivotal issue in this case is whether or not respondent's finding embodied in the letter dated October 6, 2008 addressed to the petitioner, is appealable to this Court.

The Court of Tax Appeals is vested with exclusive appellate jurisdiction over decisions, rulings or inaction of the Commissioner of Internal Revenue on disputed assessments as expressly provided in Section 7(a)(1)(2) of R.A. No. 9282[18], *viz*:

> "Sec. 7. *Jurisdiction*. – The CTA shall exercise:
>
> "(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> "(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments x x x
>
> "(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments x x x

[18] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICITON 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.

Section 7(a)(1) and (2) of R.A. 9282 should be read in conjunction with Section 228 of the 1997 NIRC and Section 3.1.5 of Revenue Regulations 12-99 both governing the procedure in protesting tax assessments covered by the NIRC, stating:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following: x x x x
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> "Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> "Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> "If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)- day period; otherwise, the decision shall become final, executory and demandable.x x x x"
>
> x x x x x x x x x
>
> **3.1.5 Disputed Assessment.** - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the

taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered ***void and without force and effect.*** If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, excutory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory, demandable, in which case, the protest shall be decided by the Commissioner. gr

> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable. (Emphasis supplied.)

In this case, as evidenced in the letter dated May 15, 2008[19], petitioner through Ms. Jaima L. Montes protested the Formal Letter of Demand with Assessment Notice Nos. LTDO 122-IT-2004-00010 and LTDO 122-VT-2004-00006 issued by the respondent finding it liable for 2004 income and VAT liabilities. In the letter dated October 6, 2008, respondent replied to petitioner's protest letter dated May 15, 2008. Thus, We must determine the language used and the tenor of the letter dated October 6, 2008 sent to the taxpayer if the same constitutes as respondent's final decision.[20] *gc*

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[19] Docket, CTA Case No. 7947, p. 222.

[20] See *Allied Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 175097, 611 SCRA 692, 701 citing *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, G.R. No. 148380, 477 SCRA 205, 211.

The letter dated October 6, 2008 reads:

October 6, 2008

TRIUMPH INTERNATIONAL PHILIPPINES, INC.
Bagsakan Road, FTI Compound
Taguig, Metro Manila

RE: FINAL DISPOSITION ON DISPUTED ASSESSMENT

Gentlemen:

Referring to your letter dated May 15, 2008 please be informed that your protest against our calendar year 2004 deficiency income tax and value added tax assessment in the total amount of P319,912,118.35, as contained in our covering letter of demand dated March 31, 2008, is hereby denied for lack of factual and legal basis.

While it is true that you filed your letter-protest within the statutory period of thirty (30) days from receipt of the FANs, you failed to submit the additional documents specified therein within the sixty-day statutory period to submit such documents x x x

Since our decision on said assessment is final, it is requested that your aforesaid deficiency tax liabilities be paid immediately upon receipt hereof, inclusive of penalties incident to its delinquency. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from date of receipt hereof, otherwise the said deficiency internal revenue taxes shall become final, executory and demandable. x x x (Emphasis supplied.)

Very truly yours,

(signed)
MARISSA O. CABREROS
HREA, Large Taxpayers Service
Administrative & Enforcement
LTDO's Makati & Cebu[21]

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[21] Docket, CTA Case No. 7947, p. 224.

The contents of the letter dated October 6, 2008 disclose the following: 1) the denial of petitioner's protest on the assessment concerning its alleged 2004 income tax and VAT deficiencies of P319,912,118.35; 2) demand to pay petitioner's tax liabilities; and 3) should the petitioner as taxpayer refused to immediately pay such alleged deficiencies, it was given opportunity to file an appeal with this Court. All these factors show finality of the decision on the disputed assessment which should have been immediately brought to the Court's attention.

The Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment similar to the case at bar. It is at this stage, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time.[22]

Clearly, the October 6, 2008 correspondence constitutes as the final decision on disputed assessment on petitioner's 2004 income and VAT liabilities, and under Section 7 of the 1997 NIRC, Ms. Cabreros of the HREA Large Taxpayers Service on behalf of the respondent, is authorized to issue such ruling. [23]

While it is true that the letter dated October 6, 2008 conclusively deals with petitioner's 2004 income and VAT liabilities, the Court in Division correctly observed its failure to either timely appeal the same before the Court of Tax Appeals within 30 days

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[22] *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, supra citing *Surigao Electric Co., v. Court of Tax Appeals*, L-25289, 57 SCRA 523.
[23] *Oceanic Wireless Network, Co. Inc. v. Commissioner of Internal Revenue*, supra.

from receipt thereof, or move for a reconsideration with the respondent also within the same period under Sections 228 and 3.1.5 of Revenue Regulations 12-99. Thus, counting from petitioner's receipt of the Final Decision on Disputed Assessment on November 27, 2008[24], it had until January 5, 2009[25] to appeal with the Court of Tax Appeals, or to file a Motion for Reconsideration before the respondent. Petitioner mistakenly reckoned the appeal period from receipt of Notice Before Seizure dated June 15, 2009. Where the assessment has already become final for failure of the taxpayer to appeal to the CTA as required by law, the assessment can no longer be disputed.[26] As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is not in the position to assail the correctness of respondent's findings on its tax liabilities, including prescription of the Government's right to assess[27] and the Court of Tax Appeals is devoid of jurisdiction to entertain and determine the correctness of the assessment.[28]

Anent petitioner's assertions that the assessment for its 2004 VAT deficiency has prescribed and both the FANs for its alleged 2004 income and VAT liabilities lack factual and legal bases resulting to void assessments are untenable. These defenses should have earlier been raised in the administrative level, specifically in petitioner's

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[24] Docket, CTA Case No. 7947, p. 211.
[25] December 27, 2008 fell on a weekend; while the rest of the days were declared special and legal holidays. Section 1, Rule 22 of the 1997 Rules of Civil Procedure.
[26] *Republic v. Manila Port Service*, G.R. No. L- 18208, 12 SCRA 384.
[27] See *City of Makati v. Commissioner of Internal Revenue*, CTA Case No. 7809, Decision dated December 16, 2009 and Resolution dated May 25, 2010.
[28] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, 491 SCRA 213.

protest letter against the FANs.[29] Issues not raised in the administrative level cannot be interposed for the first time on appeal before the courts under the tenets of prior exhaustion of administrative remedies. [30] This doctrine is explained by the Supreme Court in the case of *Aguinaldo Industries Corporation (Fishing Nets Divisions) v. Commissioner of Internal Revenue and The Court of Tax Appeals*[31],as follows:

> To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the court – which is supposed to review administrative determinations would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.[32]

Considering that the main case is dismissible, petitioner's application for the writ of preliminary injunction cannot prosper. The issuance of the preliminary injunction is a mere provisional remedy and adjunct to the main suit. A writ of preliminary injunction is an ancillary or preventive remedy that may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action.[33] The issue of propriety in obtaining a preliminary injunction dies with the main case which it logically sprang.[34] Simply stated, the

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[29]See Docket, CTA Case No. 7947 p. 222.
[30] G.R. No. L-29790, 112 SCRA 136.
[31] *Ibid.*
[32] *Id* at 140.
[33] *Philippine National Bank v. Ritratto Group, Inc., et al.,* G.R. No. 142616, 362 SCRA 216, 227.
[34] *G & S Transport Corporation v. Court of Appeals,* et al., G.R. No. 120287, 382 SCRA 262.

dismissal of the principal action, thus results in the denial of the prayer for the issuance of the writ of preliminary injunction.

The Court sees no cogent reason to resolve the other assignment of errors for being moot.

WHEREFORE, premises considered, the Petition is hereby **DISMISSED**. The Resolutions dated October 5, 2009 and February 3, 2010 are **AFFIRMED**.

SO ORDERED.

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

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

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

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.

ERNESTO D. ACOSTA
Presiding Justice