

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

EN BANC

PEOPLE OF THE PHILIPPINES,

Petitioner,

CTA EB Crim. No. 017

(CTA Crim. Case No. O-154)

Present:

-versus-

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

GLORIA F. TUYAY,

Respondent.

Promulgated:

MAR 05 2012

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R E S O L U T I O N

CASTAÑEDA, JR., J.:

Before this Court is a Petition for Review *en banc* filed on November 8, 2011 assailing the Resolution¹ of the Third Division of this Court dated October 4, 2011 in CTA Crim. Case No. O-154 entitled "*People of the Philippines vs. Gloria F. Tuyay*" which granted the "Motion for Reconsideration" of the accused (respondent, in this *en banc* case), thus, recalling and setting aside the 

¹ Penned by Associate Justice Olga Palanca-Enriquez, concurred by Associate Justice Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista inhibited.

Resolution dated August 9, 2011. The assailed resolution dismissed CTA Crim. Case No. O-154 solely in view of accused's availment of the Tax Amnesty Program under RA 9480 (Tax Amnesty Program).

In a Resolution dated December 14, 2011, respondent was ordered to file her Comment. Respondent filed her Comment/Opposition (To: Petition for Review) on January 18, 2012.

After a careful perusal of the petition for review *en banc*, it was noted that petitioner People of the Philippines is represented by Special Prosecutors and not by the Office of the Solicitor General "which contravenes established doctrine that 'the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers.'"²

In *Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory*³, the Supreme Court reiterates that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings. Pertinent portion of which is quoted hereunder, as follows:

The institution or commencement before a proper court of civil and criminal actions and proceedings arising under the Tax Reform Act which "shall be conducted by legal officers of the Bureau of Internal Revenue" is not in dispute. **An appeal** from such court, however, **is not a matter of right**. Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic. **This Court continues to maintain that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.** This pronouncement



² *Bureau of Customs vs. Peter Sherman, et al.*, G.R. No. 190487, April 13, 2011, 648 SCRA 809; Citations Omitted.

³ G.R. No. 144942, July 4, 2002, 384 SCRA 117.

finds justification in the various laws defining the Office of the Solicitor General, beginning with Act No. 135, which took effect on 16 June 1901, up to the present Administrative Code of 1987. Section 35, Chapter 12, Title III, Book IV, of the said Code outlines the powers and functions of the Office of the Solicitor General which includes, but not limited to, its duty to —

"(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

"xxx

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xxx

"(3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court."

In *Gonzales vs. Chavez*, the Supreme Court has said that, from the historical and statutory perspectives, the Solicitor General is the "principal law officer and legal defender of the government." (*Emphasis supplied; Citations omitted*).

In *Cariño vs. De Castro*⁴, the Supreme Court ruled that OSG is the appellate counsel of the People of the Philippines, a pertinent portion of the said decision is quoted as follows:

In criminal proceedings on appeal in the Court of Appeals or in the Supreme Court, the authority to represent the People is vested solely in the Solicitor General. Under Presidential Decree No. 478, among the specific powers and functions of the OSG was to "represent the government in the Supreme Court and the Court of Appeals in all criminal proceedings." This provision has been carried over to the Revised Administrative Code particularly in Book IV, Title III, Chapter 12 thereof. **Without doubt, the OSG is the appellate counsel of the People of the Philippines in all criminal cases.** (*Emphasis Supplied; Citations Omitted*).

Moreover, Section 10, Rule 9 of the 2005 Revised Rules of the CTA, as amended, reads, as follows: *Je*

⁴ G.R. No. 176084, April 30, 2008, 553 SCRA 688.

SEC. 10. *Solicitor General as counsel for the People and government officials sued in their official capacity.* — **The Solicitor General shall represent the People of the Philippines and government officials sued in their official capacity in all cases brought to the Court in the exercise of its appellate jurisdiction.** The former may deputize the legal officers of the Bureau of Internal Revenue in cases brought under the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, or the legal officers of the Bureau of Customs in cases brought under the Tariff and Customs Code of the Philippines or other laws enforced by the Bureau of Customs, to appear in behalf of the officials of said agencies sued in their official capacity: *Provided, however,* such duly deputized legal officers shall remain at all times under the direct control and supervision of the Solicitor General. *(a) (Emphasis Supplied).*

The above provision of our own external rules categorically states that the Solicitor General is the counsel of the People of the Philippines and the government officials sued in their official capacity in cases brought to the Court in the exercise of its appellate jurisdiction. This is in recognition of the doctrine that the Solicitor General has the primary responsibility to appear for the government in appellate proceedings.

Finally, in the case *Carina L. Dacer, et al., vs. Panfilo M. Lacson*⁵, the Supreme Court ruled that, "The right of the petitioners to file the petition for review on *certiorari* to seek on **appeal** the reversal of the CA's dismissal **of the criminal action without the conformity and participation of the OSG is non-existent. Hence, they are not the real parties in interest to appeal by petition for review.**" *(Emphasis Supplied).*

Based on the foregoing discussions, the Petition for Review should be dismissed. 

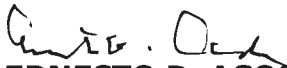
⁵ G.R. No. 196209, June 8, 2011.

WHEREFORE, premises considered, the Petition for Review is hereby
DENIED DUE COURSE, and accordingly **DISMISSED**.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:

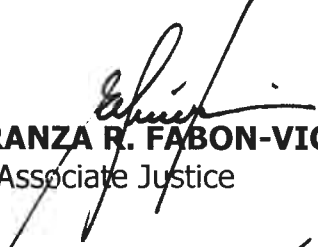

ERNESTO D. ACOSTA
Presiding Justice

(Inhibited)
LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice