Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF CUSTOMS, Petitioner,

CTA EB NO. 1731
(CTA Case No. 8495)

-versus-

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.
UY
FABON-VICTORINO
MINDARO-GRULLA
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

PHILIPPINE AIRLINES, INC., Respondent.

Promulgated:
JUN 04 2019 4:11 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves the Commissioner of Custom's (COC) "Motion for Reconsideration" filed on March 1, 2019 assailing the Court *En Banc's* February 7, 2019 Decision, the dispositive portion of which states:

> *"**WHEREFORE**, the Petition for Review is **DENIED**, for lack of merit. Accordingly, the Decision dated April 5, 2017, rendered by the Third Division of this Court in CTA Case No. 8495, and its Resolution dated October 10, 2017 are **AFFIRMED**. No pronouncement as to costs.*
>
> ***SO ORDERED.**"*

In assailing this Court's Decision, COC maintains that the Court in Division has no jurisdiction to take cognizance of the case considering the absence of a decision of the Collector of Customs. COC argues that the delay or inaction of the Collector of Customs does not justify respondent to administratively claim for refund with the COC and, at the same, with the Commissioner of Internal Revenue (CIR), which constitutes forum shopping. Moreover, COC maintains that respondent's claim for refund has no basis in evidence as there is no sufficient proof which would show that respondent actually used the imported Jet A-1 fuel in its transport and non-transport operations.

On March 14, 2019, the Court directed respondent to file a Comment on the Motion for Reconsideration within ten (10) days from receipt, otherwise the motion shall be deemed submitted for resolution.

On March 3, 2019 respondent filed a Motion for Extension of Time to File Comment on Motion for Reconsideration of COC. Respondent was granted an extension of ten (10) days from April 5, 2019 or until April 15, 2019 within which to file its Comment. In compliance, respondent filed its Comment on April 15, 2019.

We resolve to deny COC's Motion for Reconsideration.

After a careful examination of petitioner's motion for reconsideration, the Court finds that the issues and arguments raised in said motion had already been sufficiently passed upon and fully discussed not only by the Third Division's Decision dated April 5, 2017 and Resolution dated October 10, 2017 but also by the Court *En Banc's* Decision dated February 7, 2019.

To reiterate, the filing of administrative refund pursuant to the NIRC and judicial refund to forestall the running of the two-year prescriptive period for claiming tax refunds[1] is a taxpayer claimant's right. Thus, even if there is a pending administrative protest before the Collector of Customs, had respondent PAL awaited the action of the Collector of Customs and COC on its protest prior to taking court action pursuant to the NIRC, knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the excise taxes it erroneously paid to the government thereby suffering irreparable damage. The Court cannot, on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC.

[1] Commissioner of Internal Revenue v. Philippine Airlines, Inc., G.R. Nos. 212536-37, 27 August 2014.

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Furthermore, in the *Nestle Case*[2], the Supreme Court ruled that "once a written protest is seasonably filed with the Collector of Customs, the failure or inaction of the latter to promptly perform his mandated duty under the Tariff and Customs Code should not be allowed to prejudice the right of the party adversely affected thereby. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, if any is proven, and thereby enrich itself at the expense of the taxpayers. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, if any, of such taxes." The Supreme Court instructively held as follows:

> *Sections 2308 and 2309 of the Tariff and Customs Code provide that:*
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> > *Sec. 2308. Protest and Payment upon Protest in Civil Matter.* ***When a ruling or decision of the collector is made whereby liability for duties,*** *taxes, fees, or other charges* ***are determined,*** *except the fixing of fines in seizure cases,* ***the party adversely affected may protest such ruling or decision*** *by presenting to the Collector* ***at the time when payment*** *of the amount claimed to be due the government* ***is made, or within fifteen (15) days thereafter, a written protest setting forth his objection to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee,*** *as provided for in Section 3301.*
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> > *Sec. 2309. Protest Exclusive Remedy in Protestable Case.* ***In all cases subject to protest, the interested party*** *who desires to have the action of the collector reviewed,* ***shall make a protest, otherwise, the action of the collector shall be final and conclusive against him,*** *x x x.*

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[2] NESTLE PHILIPPINES, INC., (FORMERLY FILIPRO, INC.) v. HONORABLE COURT OF APPEALS, COURT OF TAX APPEALS and COMMISSIONER OF CUSTOMS, G.R. No. 134114. July 6, 2001.

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> *SEC. 2312. Decision or Action by the collector in Protest and Seizure Cases. - When a protest in a proper form is presented in a case where protest is required,* ***the collector shall*** *issue an* ***order for hearing within fifteen (15) days from receipt of the protest and hear the matter thus presented.*** *Upon termination of the hearing,* ***the Collector shall render a decision within thirty (30) days,*** *and if the protest is sustained, in whole or in part, he shall make the appropriate order, the entry reliquidated necessary. x x x .*

In the light of the above-cited provisions of the Tariff and Customs Code, it appears that in all cases subject to protest, the claim for refund of customs duties may be foreclosed only when the interested party claiming refund fails to file a written protest before the Collector of Customs. This written protest which must set forth the claimants objection to the ruling or decision in question together with the reasons therefor must be made either at the time when payment of the amount claimed to be due the government is made or within fifteen (15) days thereafter. In conjunction with this right of the claimant is the duty of the Collector of Customs to hear and decide such protest in accordance and within the period of time prescribed by the law.

Accordingly, once a written protest is seasonably filed with the Collector of Customs the failure or inaction of the latter to promptly perform his mandated duty under the Tariff and Customs Code should not be allowed to prejudice the right of the party adversely affected thereby. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, if any is proven, and thereby enrich itself at the expense of the taxpayers. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, if any, of such taxes. Indeed the State must lead by its own example of honor, dignity and uprightness.

Here, it is undisputed that the inaction of the Collector of Customs of Manila for nearly six (6) years on the protests seasonably filed by the petitioner has caused the latter to immediately resort to the CTA. The petitioner did so on the mistaken belief that its claims are governed by the rule on quasi-contract or solutio indebiti which prescribes in six (6) years under Article 1145 of the New Civil Code.

This belief or contention of the petitioner is misplaced. In order for the rule on solutio indebiti to apply it is an essential condition that petitioner must first show

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> *that its payment of the customs duties was in excess of what was required by the law at the time when the subject sixteen (16) importations of milk and milk products were made. Unless shown otherwise, the disputable presumption of regularity of performance of duty lies in favor of the Collector of Customs.*
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> *In the present case, there is no factual showing that the collection of the alleged overpaid customs duties was more than what is required of the petitioner when it made the aforesaid separate importations. There is no factual finding yet by the government agency concerned that petitioner is indeed entitled to its claim of overpayment and, if true, for how much it is entitled. It bears stress that in determining whether or not petitioner is entitled to refund of alleged overpayment of customs duties, it is necessary to determine exactly how much the Government is entitled to collect as customs duties on the importations. Thus, it would only be just and fair that the petitioner-taxpayer and the Government alike be given equal opportunities to avail of the remedies under the law to contest or defeat each other's claim and to determine all matters of dispute between them in one single case. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments, if truly proven, of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness."*

Consequently, despite the absence of a ruling on its protests from both the Collector of Customs and the Commissioner of Customs, the Supreme Court in the *Nestle Case* remanded the same to the Court of Tax Appeals for factual finding. Concomitantly, We find that the Court in Division did not err in taking cognizance of the case and in proceeding to try the case for factual finding.

As to the findings of this Court's Division, we reiterate, that the Court in Division did not err in finding that respondent PAL complied with the three (3) requisites to be exempt from all taxes under Section 13[3] of PD No. 1590[4].

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[3] SECTION 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or
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> (b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or

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In sum, We found that no substantial argument was raised to merit reconsideration of our Decision promulgated on February 7, 2019.

WHEREFORE, premises considered, the petitioner Commissioner of Custom's "Motion for Reconsideration" filed on March 1, 2019 is hereby **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, **including but not limited to the following**:

xxx xxx xxx.

(2) All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles, supplies, or materials; **provided**, that such articles or supplies or materials **are imported for the use of the grantee in its transport and nontransport operations** and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price; xxx" (Emphasis supplied)

[4] AN ACT GRANTING A NEW FRANCHISE TO PHILIPPINE AIRLINES, INC. TO ESTABLISH, OPERATE, AND MAINTAIN AIR-TRANSPORT SERVICES IN THE PHILIPPINES AND OTHER COUNTRIES

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

ERLINDA P. UY
Associate Justice

I maintain my position as indicated in my
Dissenting Opinion dated April 5, 2017
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice