REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

KEMWATER PHIL. CORP.,
Petitioner,

- versus -

SECRETARY OF FINANCE AND COMMISSIONER OF CUSTOMS,
Respondent.

C.T.A. CASE NO. 7001

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
DEC 04 2008 11:10:05 am

x - x

DECISION

BAUTISTA, *J.*:

The instant *Petition for Review* seeks the issuance of tax credit certificate or refund of the total amount of P63,134.00 that petitioner paid under protest on the alleged over-appraised and overpaid import duties; and the reversal of the Decisions made by respondents Secretary of Finance and Commissioner of Customs.

Kemwater Philippines Corporation (Petitioner) is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal business address at Chemphil Building, 851 A. Arnaiz Avenue, Legaspi Village, Makati City. It is engaged in the business of manufacturing aluminum sulfate in liquid, powder, and granular forms, using imported aluminum hydroxide as raw material.[1]

---

[1] Par. 1, Stipulated Facts, Joint Admission and Stipulation of Facts and Issues, (JASFI), *Rollo*, p. 353.

603

Respondents are the Secretary of Finance and the Commissioner of Customs, with respective office address at the Department of Finance Building, Roxas Boulevard corner Vito Cruz Street, Manila, and the Bureau of Customs Building, Port Area, Manila.

On June 7, 2001, petitioner opened with Metropolitan Bank and Trust Company (Metrobank) an irrevocable Letter of Credit under Documentary Credit No. 066/LC/001727/01 in favor of Sinochem Hebei Import and Export Corporation located in Tianjin, China.[2] The said Letter of Credit was intended for the payment of the two hundred (200) metric tons of aluminum hydroxide imported from China in the total amount of US$34,600.00.[3]

On the same date, petitioner executed a duly sworn Import Entry Declaration[4] and deposited with Metrobank the amount of P52,676.00[5], representing payment of the import duty deposit, computed as follows:

CFR	US$ 34,600.00
INSURANCE	173.00
DUTIABLE TAXES	US$ 34,773.00
EXCHANGE RATE	P 50.495
	P1,755,862.63
RATE OF IMPORT DUTY	3%
IMPORT DUTY	P 52,675.87

On June 10, 2001, Sinochem Hebei Import and Export Corporation issued Commercial Invoice No. 012570010[6] in the name of petitioner for the shipment of the 200 metric tons of aluminum hydroxide in the total amount of US$34,600.00.

On June 24, 2001, the shipment of 200 metric tons of aluminum hydroxide with declared value of One Hundred Seventy Three US Dollars (US$173.00) per metric ton consigned to petitioner and covered under Import Entry No. C-66649-01[7] arrived from Tianjin, China at the Port of Manila, on board S/S Manila Star 1 as shown by its Registration

[2] Annex "A", Petition for Review.
[3] Par. 3, Stipulated Facts, JASFI, *Rollo*, p. 354.
[4] Annex "B", Petition for Review.
[5] Exhibit "B".
[6] Annex "C", Petition for Review.
[7] Annex "F", Petition for Review.

601

No. VO17S.[8] Petitioner paid the amount of P189,462.00, in addition to the previously paid import duties and taxes of P52,676.00, computed based on the products' declared customs value of US$173 per metric ton, detailed hereunder:[9]

DUTY	P1,783,269.95	
	3%	P 53,498.00
VAT	P1,876,398.82	
	10%	187,640.00
IPF		1000.00
TOTAL		P242,138.00
Less: DEPOSIT		52,676.00
BALANCE		P189,462.00

Afterwards, on June 27, 2001, the parties executed a Purchase Contract[10] for the aforesaid transaction.

Nevertheless, petitioner's importation was re-appraised by respondent using the established value of Two Hundred Twenty US Dollars (US$220) per metric tons, resulting in the increase in assessment to the total amount of P335,810.00, computed as follows:[11]

FOB VALUE		US$44,000.00
OCEAN FREIGHT		3,500.00
INSURANCE		220.00
DUTIABLE VALUE		US$47,720.00
EXCHANGE RATE		P52.101
IMPORT DUTY	P2,486,259.72	
	3%	P74,587.00
VAT	P2,601,970.75	
	10%	260,223.00
IPF		1,000.00
RE-APPRAISED VALUE		P 335,810.00

On June 29, 2001, petitioner paid under protest the additional duties based on the re-appraisal assessment in the total amount of P93,674.00, representing the difference between the computations based on US$220.00 per metric ton and the previous US$173.00

[8] Par. 2, Admitted Facts, JASFI, *Rollo*, p. 348.
[9] Par. 3, Admitted Facts, JASFI, *Rollo*, p. 349.
[10] Annex "D", Petition for Review.
[11] Par. 4, Admitted Facts, JASFI, *Rollo*, p. 349.

per metric ton based on actual invoice amount.[12] On July 3, 2001, petitioner filed its letter-protest to the subject assessment with a request to update the customs value based on the amount of US$173 per metric ton.[13]

On August 24, 2001, another shipment of aluminum hydroxide from India with quantity valued at Three Hundred (300) metric tons aboard S/S Uni Patriot, 0674-017E under Import Entry No. C-89901-01[14], arrived at the Manila International Container Port, with petitioner as the consignee.[15] The aforesaid quantity had a declared customs value of One Hundred Forty Two and 50/100 US Dollars (US$142.50) per metric ton.

Petitioner paid the amount of P352,320.00, computed as follows:[16]

FOB VALUE		US$42,750.00
OCEAN FREIGHT		7,950.00
INSURANCE		213.75
DUTIABLE VALUE		US$50,913.75
EXCHANGE RATE		P51.101
IMPORT DUTY	P2,601,743.54	
	3%	P78,052.00
VAT	P2,732,679.66	
	10%	273,268.00
IPF		1,000.00
TOTAL PAYMENT		P 352,320.00

However, petitioner's importation was re-appraised by the assigned customs appraiser using the established value in the amount of Two Hundred Seventeen US Dollars (US$217) per metric ton, resulting in the increase of the assessment to the total amount of P543,325.00, detailed as follows:[17]

IMPORT DUTY	P 121,096.00
VAT	421,229.00
IPF	1,000.00
RE-APPRAISED VALUE	P 543,325.00

---

[12] Annex "G", Petition for Review.
[13] Annex "H", Petition for Review.
[14] Annex "M", Petition for Review.
[15] Par. 8, Admitted Facts, JASFI, *Rollo*, p. 350.
[16] Par. 9, Admitted Facts, JASFI, *Rollo*, p. 350.
[17] Par. 10, Admitted Facts, JASFI, *Rollo*, p. 350.

On August 27, 2001, petitioner paid under protest the additional duties on the re-appraisal assessment in the total amount of P191,005.00, representing the difference between the computations based on US$217.00 per metric ton per re-appraisal and US$142.50 per metric ton based on actual invoice amount.[18]

On August 31, 2001, petitioner filed its Letter of Protest[19], assailing the assessment made based on US$217.00 per metric ton, instead of the actual invoice amount of US$142.50 per metric ton; with a request to update the customs value based on the latter amount.[20]

Petitioner alleges that Revision Order No. 9-2001 was issued by the Customs Valuation Team (CVT), setting the valuation of imported aluminum hydroxide from China and India, effective as of June 2001, ranging from One Hundred Forty Nine and 97/100 US Dollars (US$149.97) to One Hundred Fifty Five and 50/100 US Dollars (US$155.50) per metric ton, and One Hundred Forty Two and 50/100 US Dollars (US$142.50) to One Hundred Fifty Eight and 50/100 US Dollars (US$158.50), respectively, based on the Freight on Board prices.[21]

On January 8, 2003, the District Collector of Customs of Manila, Atty. Felipe R. Bartolome issued the 1st Indorsement[22] and Decision[23] granting the claim for refund of petitioner in the amounts of P93,674.00 and P191,005.00, respectively. Below is the dispositive portion of the Decision of the Customs District Collector:

> "WHEREFORE, above premises considered and by virtue of the authority vested in this office by law, the instant protest cases are AFFIRMED as they are hereby AFFIRMED. Accordingly, Entry Nos. C66649-01 and C89901-01 are hereby ordered RELIQUIDATED and the amounts of Php93,674.00 and Php191,005.00, respectively, are hereby ordered REFUNDED to Protestant KEMWATER PHILS. CORP. in the form of tax credit.

---

[18] Annex "N", Petition for Review.
[19] Annex "O", Petition for Review.
[20] Par. 12, Admitted Facts, JASFI, *Rollo*, p. 350.
[21] Par. 14, Admitted Facts, JASFI, *Rollo*, p. 350; Exhibits "Q" and "R".
[22] Annex "S", Petition for Review.
[23] Annex "U", Petition for Review.

Let this Decision be forwarded to the Commissioner of Customs for AUTOMATIC REVIEW pursuant to Section 2135 of the TCCP, as amended.

SO ORDERED."

The aforesaid Decision of the District Collector of Customs was subsequently affirmed and recommended for approval by the Commissioner of Customs in his 2nd Indorsement to the Secretary of Finance dated July 9, 2003.[24]

On August 7, 2003, respondent Secretary of Finance, through DOF Undersecretary Ma. Gracia M. Pulido-Tan, issued the 3rd Indorsement[25] reversing respondent Commissioner's recommendation, which is hereunder stated as follows:

> "In the light of the foregoing, we cannot therefore affirm the Decision dated 08 January 2003 of the District Collector of Customs, Manila International Container Port. Consequently, we cannot accede to the request of the Commissioner of Customs recommending approval thereof under its 2nd indorsement dated July 9, 2003, which was received by the Department of Finance on July 10, 2003.
>
> Please be guided accordingly."

In a letter dated September 8, 2003, Chemphil Group sought the reconsideration of the *Decision* (3rd Indorsement) of the Secretary of Finance on the protest of its affiliate Kemwater Philippines Corporation, herein petitioner.[26] In a letter[27] dated September 22, 2003, DOF Undersecretary Ma. Gracia M. Pulido-Tan denied petitioner's reconsideration letter dated September 8, 2003, in the following manner:

> "In reply to your letter dated September 8, 2003 regarding the customs protest cases filed by the affiliates of Chemphil Group, i.e. LMG Chemicals Corporation and Kemwater Philippines Corporation, please be advised that the Department of Finance (DOF) in its Indorsements dated August 7, 2003 to the Bureau of Customs (BOC), has denied the Decision of the Collector of Customs, Port of Manila. For reasons stated in said Indorsement, we could not accede to the recommendation of the Commissioner of Customs for approval of said Decision. Accordingly, pursuant to SEC. 2315 of the Tariff and Customs Code of the Philippines

---

[24] Annex "V", Petition for Review.
[25] BOC Records, p. 5.
[26] Exhibit "1".
[27] Exhibit "2".

> (TCCP) as amended, the aggrieved party may appeal the DOF decision to the Court of Tax Appeals, to wit:
>
> xxx xxx xxx
>
> In view of the foregoing, this Office can no longer take cognizance of said protest cases."

On October 3, 2003, petitioner received the copy of the September 22, 2003 letter of Undersecretary Pulido-Tan including the attached copy of the 3rd Indorsement dated August 7, 2003.[28]

Chemphil Group again sent a letter dated October 14, 2003 addressed to Atty. Felipe Bartolome, District Collector of Customs, Manila International Container Port, reiterating the same arguments in its earlier letter dated September 8, 2003 addressed to DOF Undersecretary Pulido-Tan.[29]

District Collector Bartolome *via* 1st Indorsement dated October 28, 2003, forwarded to Commissioner Antonio Bernardo the October 14, 2003 letter of Chemphil Group.[30]

On March 1, 2004, the DOF through Atty. Rogelio A. Casiguran, DOF Revenue Office Director, issued the 1st Indorsement[31] refusing to take cognizance of the reconsideration sought. Below is the abstract of the said 1st Indorsement:

> "Respectfully returned to the Commissioner of Customs, Manila, the within docket of MICP Protest Case Nos. 01-066 and 01-077 **Kemwater Phils., Corp.**, xxx, with the information that this Department cannot act on the said motion for reconsideration for the following reasons: a) Section 2315 of the Tariff and Customs Code of the Philippines provides that the aggrieved party in a decision rendered by the Secretary of the Department of Finance may appeal to the Court of Tax Appeals within 30 days from receipt of the decision; b) the authority of the Secretary of the Department of Finance to review protest cases does not extend to administrative review of rulings/decisions in matters appealed to the CTA; and c) there is a pending petition for review with the Court of Tax Appeals (LMG Chemicals Corp., vs Secretary of Finance et al. CTA Case No. 6860) the petitioner being a sister/affiliate company which involve the same issue."

---

[28] Exhibit "5".
[29] Annex "X", Petition for Review.
[30] Annex "Y", Petition for Review.
[31] Annex "Z", Petition for Review.

On May 6, 2004[32], petitioner received a copy of the 1st Indorsement dated March 1, 2004, as an attachment of the May 4, 2004 letter of Atty. Edward R. Ibera, BOC Law Division Chief.[33]

On June 10, 2004, petitioner filed its *Petition for Review.*

In an *Answer* made by respondents Secretary of Finance and Commissioner of Customs on October 15, 2004, they allege that the instant *Petition* was filed out of time and must accordingly be dismissed.

On March 15, 2006, petitioner filed its *Formal Offer of Documentary Evidence*, while respondent's *Formal Offer of Evidence* was filed on April 2, 2007.

On November 9, 2007, petitioner filed its *Memorandum*, while respondents filed their *Memorandum* on November 28, 2007.

On December 12, 2007, the instant case was submitted for decision.

The issues as stipulated by the parties are as follows:

"4.1. Whether or not the Petition for Review was timely filed by petitioner.

4.2. Whether or not the applicable FOB prices of Aluminum Hydroxide were US$173.00 per metric ton (Imported from China in June 2001) and US$142.50 per metric ton (Imported from India in August 2001).

4.3. Whether or not petitioner is entitled to a refund or credit of P64,134.00.

4.4. Whether or not the respondents committed grave errors in law and in fact in denying the protests based on their refusal to consider that Revision Order No. 9-2001 is applicable to the protests subject of the instant case;

4. 4.1. Whether or not the respondents may be bound by the opinion of Melita O. Del Rosario as stated in her letter dated August 18, 2003.

4.4.2. Whether or not the opinion of Melita O. Del Rosario has any legal basis.

[32] May 12, 2004 based on Par. 3.20 of the Petition for Review.
[33] Annex "BB", Petition for Review.

4.5. Whether or not respondents committed grave errors in law and in fact in denying the protests based on a pending case which is distinct and separate from the instant case."

The Court will first resolve the issue pertaining to prescription.

Pertinent to the resolution of the foregoing issue are Section 2315 of the Tariff and Customs Code of the Philippines (TCCP), and Section 7(a)(6) of Republic Act No. 9282, which are hereunder quoted for ready reference:

> "**SEC. 2315 Supervisory Authority of Commissioner and Secretary of Finance in Certain Cases.** – If any case involving the assessment of duties, the Collector renders a decision adverse to the Government, such decision shall be automatically elevated to, and reviewed by, the Commissioner; and if the Collector's decision would be affirmed by the Commissioner, such decision shall be automatically elevated to, and be finally reviewed by, the Secretary of Finance: Provided, however, That if within thirty (30) days from receipt of the record of the case by the Commissioner or by the Secretary of Finance, as the case may be, no decision is rendered by either of them, the decision under review shall become final and executory. Provided, further, **That any party aggrieved by either the decision of the Commissioner or of the Secretary of Finance may appeal to the Court of Tax Appeals within thirty (30) days from receipt of a copy of such decision. For this purpose, Republic Act numbered eleven hundred and twenty-five is hereby amended accordingly.**" (*Emphasis supplied*)
>
> "SEC. 7. *Jurisdiction*. - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs adverse to the Government under Section 2315 of the Tariff and Customs Code;"

From the foregoing, petitioner had thirty (30) days from receipt of the Decision of the Commissioner of Customs or the Secretary of Finance denying its protest to file its appeal to this Court; which in this case is the 3rd Indorsement dated August 7, 2003 of the Secretary of Finance.

However, despite petitioner's receipt of the 3rd Indorsement of the Secretary of Finance denying its protest, petitioner did not immediately file its *Petition* with this Court. Instead, petitioner's representatives sought audience with Atty. Katherine Manahan of the DOF. Thereafter, a certain Rolando P. Navarro, Vice President for Legal of Chemphil Group, wrote the September 8, 2003 letter addressed to DOF Undersecretary Pulido-Tan attempting to convince her to reverse her decision by controverting all the grounds mentioned in the 3rd Indorsement dated August 7, 2003, used by her in denying petitioner's protest.

It would appear that as early as September 8, 2003, petitioner had already received a copy of the 3rd Indorsement dated August 7, 2003 of the Secretary of Finance reversing the decision of the Commissioner of Customs and denying the protest cases of petitioner. This is clear from the very same September 8, 2003 letter of the Chemphil Group, when the letter addressed all the bases used in denying its protest in the 3rd Indorsement dated August 7, 2003. Not only did petitioner's September 8, 2003 letter tackled all the grounds for denial contained in the August 7, 2003 3rd Indorsement, but the letter also used the words "reconsideration" and "further review"; disclosing its real intent. The pertinent portions of petitioner's September 8, 2003 letter are hereunder quoted, to wit:

> "We have sought an audience with your Atty. Katherine Manahan to express our position on the matter. We were advised, however, that since the records had already been remanded to the BOC it would be best for the latter to forward the papers to the DOF for **reconsideration**. We also understand from her that the DOF would consider other legal points which may have been overlooked during the deliberations of this case. However, in a meeting with BOC functionaries, we were advised to write you a request that the latter instruct the BOC which is a subordinate agency to return the case folders to the DOF for **further review**." (*Emphasis supplied*)

DOF Undersecretary Pulido-Tan replied through her letter dated September 22, 2003, reiterating her reasons for denying the protest and claim for refund and informed petitioner that the proper remedy is to file an appeal to the Court of Tax Appeals.

The letter dated September 22, 2003 addressed to petitioner was mailed on September 30, 2003. Likewise, Atty. Katherine Manahan sent a copy of the September 22, 2003 letter of Undersecretary Pulido-Tan to petitioner through personal service.

Mr. Renato C. Reyes, the Liaison Officer/Messenger of Central Records Division of the Department of Finance, testified that he personally delivered the September 22, 2003 letter of Undersecretary Ma. Gracia M. Pulido-Tan with the Secretary's 3rd Indorsement dated August 7, 2003. This fact can be gleaned from his sworn statement dated November 10, 2006[34], which is hereunder quoted in part:

> "6. Q: Sometime on September 30, 2003, Atty. Catherine T. Manahan of the Department of Finance issued a letter to Chemphil Group attaching therein the September 22, 2003 letter by Undersecretary Ma. Gracia M. Pulido-Tan also addressed to Chemphil Group with address at 851 Arnaiz Avenue, Legaspi Village, 1229 Makati City. What participation, if any did you have in the delivery of said letter to Chemphil Group?
>
> A: On October 3, 2003, I received a copy of said letter together with its attachment from the releasing officer of the Records Division of the Department of Finance.
>
> 7. Q: What proof can you show to this Honorable Court that you did in fact receive a copy of the letter dated September 30, 2003 together with its attachment from the releasing officer?
>
> A: I have with me a certified true copy of the letter where I affixed my signature to signify that I received the letter together with its attachments for delivery to Chemphil Group.
>
> 8. Q: What did you do upon receipt of said letter and its attachments?
>
> A: I immediately delivered the letter and its attachments to Chemphil Group on October 3, 2003, the same date I received it from the releasing officer."

In the same sworn statement of Mr. Renato C. Reyes, he recalls that he delivered the said letter on October 3, 2003 and let the guard on duty, being authorized to receive mail matters, sign the receiving copy.

---

[34] Exhibit "4".

This testimony was corroborated by another witness, Ms. Maria Ney B. Poculan, the Supervising Administrative Officer of the Central Records Management Division, Department of Finance, when she testified that the Department of Finance was able to send the letter dated September 22, 2003 of Undersecretary Ma. Gracia M. Pulido-Tan to petitioner by personal service and mail, in this wise:[35]

> "MS. POCULAN:
> A: I am here to certify that we sent the letter to Kemphil through mail, dated September 22, 2003. We mailed it on September 30, 2003 and the other is a letter dated September 30. We sent it through our messenger, Mr. Renato Reyes.
>
> SOL. RECON:
> Q: Ms. Witness, I am showing to you copy of said letter, dated September 22. Now there is a certification, issued by the Department of Finance that this copy is a certified true copy of such letter. There is a name of an officer certifying such copy. The name is Maria Ney B. Poculan, can you please tell this Court who that person is?
>
> MS. POCULAN:
> A: The certifying officer of this letter dated September 22, 2003 is myself, Maria Ney B. Poculan.
>
> SOL. RECON:
> Q: There is a signature above the printed name Maria Ney B. Poculan, whose signature is that?
>
> MS. POCULAN
> A: I personally signified the true copy of this letter.
>
> SOL. RECON:
> Your Honors, may we request that the September 22, 2003 letter, certified true copy, be marked as respondent's Exhibit '2'.
>
> JUSTICE BAUTISTA:
> Mark it.
> (Executive Clerk so marks).
>
> SOL. RECON:
> Q. Ms. Witness, you previously testified that this letter was sent to Kemphil by your office. Now, what proof do you have that this letter was sent to Kemphil by your office?

---

[35] Transcript of Stenographic Notes (TSN) dated September 21, 2006, pp. 10-14.

MS. POCULAN:
A: We have a proof here, in our logbook. I certified it also on page 275. We mailed it on September 30, 2003.

SOL. RECON:
Q: Now, I have here a certified true copy of the Stamps Record Book and the particular page of the Stamps Record Book, certified by Maria Ney Poculan, what relation, if any has this certified true copy with that proof that you mentioned earlier?

MS. POCULAN:
A: This is the same copy that I mentioned earlier.

SOL. RECON:
Q: Can you please state whose signature is that above the name Maria Ney Poculan?

MS. POCULAN:
A: This is my signature.

SOL.RECON:
Q: You also issued a certification stating that the letter dated September 22 addressed to Kemphil was mailed on September 30, 2003. Can you please state whether the signature above the name Maria Ney Poculan is yours?

MS. POCULAN:
A: This is my signature.

SOL. RECON:
Your Honors, may request that the certification be marked as Exhibit '3' for the respondent and the attachment be likewise sub-marked as Exhibits '3-a' and '3-b'.

JUSTICE BAUTISTA:
All right, mark them.
(Executive Clerk so marks).

SOL. RECON:
Q: Ms. Witness, where particularly are the entries in the page of the logbook does it show that Kemphil was sent a copy of the letter dated September 22, 2003?

MS. POCULAN:
A: The highlighted portion right below that has an 'X' at the left corner, Kemphil Group, the address is Makati City. This is the letter that we sent dated September 22.

SOL. RECON:
Your Honors, may we request that, that specific portion pointed to by the witness be sub-marked as Exhibit '3-b-1' for the respondent.

JUSTICE BAUTISTA:
Mark it.
(Executive Clerk so marks)."

Since respondents' witnesses Mr. Renato C. Reyes and Ms. Maria Ney B. Poculan are public officers, they enjoy the disputable presumption that their official duty has been regularly performed unless contradicted and overcome by other evidence, pursuant to Section 3(m), Rule 131 of the Revised Rules of Court. In the absence of proof that the aforesaid witnesses performed their duties irregularly, it is presumed that the acts in question were in conformity with the usual conduct of business.

Petitioner likewise attempted to cure its failure to file the *Petition for Review* within the reglementary period by claiming non-receipt of the August 7, 2003 3rd Indorsement. It stated in the *Petition for Review* that it had sent a follow-up letter dated October 14, 2003 to Atty. Felipe Bartolome, District Collector of Customs, Manila International Container Port[36]. However, the said letter is merely a reiteration of the letter dated September 8, 2003, which it had previously sent to DOF Undersecretary Pulido-Tan.

Petitioner's receipt of the August 7, 2003 3rd Indorsement cannot be denied because the 1st Indorsement dated October 28, 2003 by District Collector Felipe A. Bartolome[37] considered petitioner's October 14, 2003 letter as a motion for reconsideration of the denial of its protest/refund claim. The 1st Indorsement dated October 28, 2003 states:

> "Respectfully forwarded to the Honorable ANTONIO M. BERNARDO, Commissioner of Customs, Bureau of Customs, Manila, the within file folder of protest Cases Nos. 2001-066 and 2001-007 which is the subject of the letter dated 14 October 2003 of Protestant, KEMWATER PHILIPPINES CORP. partaking the nature of a reconsideration of the denial of its claim for refund of excess duties and taxes paid on its shipments sufficient to elevate the matter to the Department of Finance for its consideration."

The Secretary of Finance correctly refused to take cognizance of the motion for reconsideration filed by petitioner principally because the proper remedy of petitioner was to

[36] Annex "X", Petition for Review.
[37] Annex "Y", Petition for Review.

file an appeal with this Court and not a motion for reconsideration with the Secretary of Finance. This is clearly provided in Section 2315 of the TCCP.

As early as the September 22, 2003 letter of DOF Undersecretary Pulido-Tan, in answer to petitioner's letter dated September 8, 2003, petitioner had already been informed of the proper remedy from the adverse decision of the Secretary of Finance, *i.e.*, appeal to the Court of Tax Appeals. This sound legal advice petitioner decided to ignore.

The remedy of petitioner upon the denial of its claim for protest is clearly stated in Section 2315 of the TCCP, in relation to Section 7(a)(6) of R.A. No. 9282. Petitioner should have filed its appeal with this Court within thirty days from the notice of denial.

Here, the 1st Indorsement dated March 1, 2004 is not the Decision contemplated by the afore-cited laws. In the said Indorsement no issues were addressed. It merely informed petitioner that it can no longer act on petitioner's motion for reconsideration inasmuch as there is already an appellable *Decision* of the Secretary of Finance. Thus, the receipt of the 1st Indorsement dated March 1, 2004 on May 6, 2004 is of no moment in the counting of the thirty (30)-day period. The filing of a motion for reconsideration did not toll the period for filing the *Petition*.

Assuming that petitioner's allegation of non-receipt of the copy of the 3rd Indorsement dated August 7, 2003 is true, then it is the receipt of the letter dated September 22, 2003 with the attached copy of the 3rd Indorsement on October 3, 2003 that should be the reckoning point of the counting of the 30-day period. Consequently, petitioner had only until November 2, 2003 to file its *Petition for Review*.

However, it took petitioner almost nine months to file the instant *Petition* on June 10, 2004. This is way beyond the period allowed under the TCCP. The right to appeal is a procedural remedy of statutory origin and, as such, may be exercised only in accordance with the law. The perfection of an appeal within the period and in the manner prescribed by law is essential.[38] An appeal filed beyond the reglementary period results in the failure of the appellate court to acquire jurisdiction over the decision sought to be reviewed.[39]

Finding that petitioner filed its *Petition for Review* only on June 10, 2004, petitioner's *Petition for Review* is now dismissed for being filed out of time. Accordingly, the other stipulated issues are now rendered moot.

WHEREFORE, premises considered, the *Petition for Review* is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

---

[38] Oro vs. Diaz, 361 SCRA 108.
[39] DBP vs. CA, 358 SCRA 501.