REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

REPUBLIC OF THE PHILIPPINES, rep. by the COMMISSIONER OF CUSTOMS, Petitioner,	CTA EB NO. 679 (CTA CASE NO. 7742)
	Present:
- versus -	ACOSTA, PJ CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ.
NPC ALLIANCE CORPORATION, rep. by Renato B. Magadia, Vice-Chairman of the Board, Respondent.	**Promulgated:** OCT 25 2011 11:30 a.m.

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DECISION

UY, J.:

This is a "Petition for Review (with application for a Temporary Restraining Order and/or Writ of Preliminary Injunction)" filed by the petitioner, Republic of the Philippines, represented by the Commissioner of Customs, on September 8, 2010 by registered mail, and duly received by this Court on September 27, 2010, against respondent, NPC Alliance Corporation, represented by Renato B. Magadia, Vice Chairman of the Board. Petitioner assails the Resolutions dated June 3, 2010 and August 6, 2010, both rendered by the Third Division of this Court (Court in Division) in CTA Case

No. 7742[1], entitled "NPC Alliance Corporation, represented by Renato B. Magadia, Vice Chairman of the Board, petitioner, v. Commissioner of Customs, respondent", which were resolved as follows:

1) The Resolution promulgated on June 3, 2010[2] denied herein petitioner's "Manifestation and Motion In Lieu Of Comment" filed on March 12, 2010, seeking disapproval of the Surety Bond G (16) No. 16552 issued by Philippine British Assurance Company, Inc. (PBAC) allegedly for violation of applicable Customs Memorandum Orders and invoking that the amount of bond should be double the total value of the subject shipment at the time of its importation; and

2) The Resolution promulgated on August 6, 2010[3] denied herein petitioner's "Motion for Reconsideration (of the Resolution dated June 3, 2010)" filed on June 23, 2010, for lack of merit.

THE FACTS

Culled from the records of this case and as stipulated by the parties[4], these are the facts of the case.

Petitioner is the duly appointed Commissioner of Customs (COC), an agency under the Department of Finance, tasked with the enforcement of the Tariff and Customs laws and all other laws, rules, and regulations relating to tariff and customs administration. He may be served with legal processes at the Office of the Solicitor General, 134 Amorsolo St., Legaspi Village, Makati City.

On the other hand, respondent NPC Alliance Corporation (NPCA) is a domestic corporation based in Mariveles, Bataan engaged in the processing of ethylene as its prime ingredient to produce polyethylene to be used for the downstream industry producing plastics. It may be served with legal

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[1] Chaired by Associate Justice Lovell R. Bautista, with Associate Justices Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas as members.
[2] Docket, pp. 34-40.
[3] Ibid., at pp. 41-47.
[4] Joint Stipulation of Facts, as approved by the Former Second Division of this Court in the Resolution dated November 19, 2008, Records, Volume I, CTA Case No. 7742.

processes through its counsel of record, Atty. Abraham Espejo, with address at the New Era University College of Law, 4th Floor Building B, NEU Compound, No. 9 Central Avenue, Diliman, Quezon City.[5]

On March 28, 2008, NPCA filed a Petition for Review before the Former Second Division of this Court[6] in CTA Case No. 7742, entitled "NPC Alliance Corporation, represented by Renato B. Magadia, Vice Chairman of the Board, petitioner, v. Commissioner of Customs, respondent", assailing the Decision dated February 21, 2008 of the Commissioner of Customs, which affirmed the Decision dated December 3, 2007 of the District Collector of Customs decreeing the forfeiture of respondent's shipments consisting of diesel generator sets with accessories in favor of the Government.

On June 18, 2008, the COC filed his Answer thereto and the case was set for pre-trial conference on July 31, 2008. As directed by the Court *a quo*, the parties filed their Joint Stipulation of Facts on November 10, 2008[7], and they agreed on the following incidents, to wit:

> "1. Alert Order No. A/OC/20070420-101 was issued against NPCA's first shipment for alleged undervaluation/misdeclaration;
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> 2. The issuance of a Warrant of Seizure and Detention (WSD) dated April 29, 2007 against NPCA's first shipment by the District Collector of Subic;
>
> 3. Despite the subsistence of the aforesaid WSD, NPCA included its first shipment in its May 10, 2007 application for tax and duty exemption;
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> 4. A WSD dated June 26, 2007 was again issued by the District Collector of Subic against the first shipment;

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[5] Petition For Review (with application for a Temporary Restraining Order and/or Writ of Preliminary Injunction), Docket, pp. 16-17.
[6] The Former Second Division of this Court was chaired by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez as members.
[7] Supra., see note 4.

5. On April 20, 2007, the Office of the Customs Commissioner issued Alert Order No. A/OC/20070420-102 against the second shipment;

6. On May 10, 2007, NPCA submitted its application to have all three subject shipments exempt from duties and taxes under Section 105 (i) of the Tariff and Customs Code governing conditionally-free importations;

7. NPCA's application for conditionally-free importation was in the form of a letter signed by Mr. Karim Khatami, Chief Finance Office(r) of NPCA, and accompanied by an Affidavit of Use;

8. The DOF, under its indorsement of even date, approved NPCA's application;

9. The District Collector of Subic issued a WSD dated July 31, 2007 against all three shipments;

10. The existence, authenticity and due execution of the following documents:

a. Alert Order No. A/OC/20070420-101 dated Apri10, 2007;

b. Indorsement of the Office of the Customs Commissioner dated April 27, 2007;

c. WSD dated April 29, 2007 issued by District Collector Marietta D. Zamonaros;

d. Alert Order No. A/OC/20070420-102 dated April 20, 2007 issued by the Office of the Commissioner against NPCA's second shipment;

e. NPCA's application dated May 10, 2007 in the form of a letter signed by Mr. Karim Khatami requesting that its three shipments be considered conditionally-free importations under Section 105 (i) of the Tariff and Customs Code;

f. Affidavit of Use of Mr. Karim (Khatimi) which was attached to the application for conditionally-free importation;

g. 1st Indorsement of the DOF dated May 10, 2007 granting (NPCA's) application for conditionally-free importation;

h. WSD dated July 31, 2007 against NPCA's three shipments."

On March 19, 2009, the Former Second Division of this Court approved Surety Bond G(16) No. 00850 issued by CAP General Insurance Corp. (CAP Gen) in favor of herein respondent, the purpose of which was to obtain the release of three shipments of generator sets which the Commissioner of Customs previously forfeited in favor of the Government.

On September 30, 2009, COC filed an Urgent Motion to Recall/Revoke Surety Bond G(16) No. 00850, contending that CAP Gen has no certificate of Authority issued by the Insurance Commission; and hence, disqualified from acting as surety in CTA Case No. 7742. Consequently, the Former Second Division of this Court issued the Resolution dated November 10, 2009, recalling and setting aside the Resolution dated March 19, 2009 due to: (a) CAP Gen's failure to obtain a Certificate of Authority from the Insurance Commission (IC) for the period July 1, 2009 to June 30, 2010; (b) CAP Gen's pending request with a rehabilitation court to cover up its deficiencies; and (c) non-renewal by the Supreme Court of CAP Gen's certificate of accreditation and authority to transact business with the courts.

In the same resolution, the Former Second Division ordered NPCA to post another surety bond in the amount of P250,000,000.00 pursuant to its Resolution promulgated on May 30, 2008 from another reputable bonding company duly authorized and accredited by the Supreme Court.

In compliance therewith, NPCA submitted to the Former Second Division Bond G(16) No. 16552 dated December 8, 2009, this time issued by the Philippine British Assurance Company, Inc. (PBAC). Upon confirming the

PBAC's status as surety duly-licensed with the IC, the COC moved for the amendment of the effectivity clause of Bond G(16) No. 16552 which was limited to only one year or from December 8, 2009 to December 8, 2010.

In the Resolution dated January 8, 2010, the Former Second Division directed NPCA to cause the amendment of the effectivity of its bond to be made co-extensive with the duration of the proceedings in CTA Case No. 7742. In the interim, CTA Case No. 7742 was re-assigned to the Third Division of this Court (Court in Division) in the Resolution dated January 14, 2010. Subsequently, the Office of the Commissioner informed NPCA's counsel that the PBAC, while duly licensed with the IC, is nevertheless not accredited with the Bureau of Customs (BOC). Thus, the COC moved for the disqualification of PBAC as a surety citing the latter's failure to settle its outstanding bond liability with the BOC in violation of Customs Memorandum Order (CMO) Nos. 22-2003 and 7-2007, while respondent filed its opposition thereto on April 5, 2010.[8]

In the assailed Resolution dated June 3, 2010, the Court in Division denied petitioner's motion for PBAC's disqualification, the dispositive portion of which is quoted hereunder, to wit:

> "**WHEREFORE**, for all the foregoing, and in the broader interest of substantial justice, petitioner (herein respondent) is given a non-extendible period of fifteen (15) days from notice hereof to properly comply with requirements of A.M. No. 04-7-02-SC, with a stern warning to strictly comply with the Court's orders so as not to delay the proceedings of this case, otherwise if it fails to do so, this Court will be constrained to recall and set aside the Resolution dated March 19, 2009, ordering respondent (herein petitioner) Commissioner of Customs to immediately release the subject generator sets.

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[8] Statement of Facts and the Case, Petition For Review (with application for a Temporary Restraining Order and/or Writ of Preliminary Injunction), Docket, pp. 17-19.

> Petitioner's (Respondent's) 'Additional Supplement to Compliance with Plea for Issuance of Writ of Execution' filed on January 12, 2010 is hereby **NOTED**.
>
> Respondent's (Petitioner's) 'Manifestation and Motion In Lieu of Comment' is hereby **DENIED**.
>
> Meanwhile, resolution on petitioner's (respondent's) 'Ex-Parte Motion for Issuance of a Writ of Execution (Re: Resolution dated 19 March 2009)', Urgent Motion for Respondent (Petitioner) Commissioner of Customs and the District Collector of the Port of Subic to Comply With and Implement this Honorable Court's Resolution dated 19 March 2009 (By way of Supplement to the 'Ex-Parte Motion for Issuance of A Writ of Execution'), 'Compliance with Urgent Plea to Admit Bond and for a Writ of Execution to be Issued', 'Supplement to Compliance with Plea', and 'Amended Compliance: Re Submission of Amendment to the Bond, Supreme Court Clearance With Plea for Issuance of Writ of Execution to Implement The Order Of This Court Dated March 19, 2009' is hereby **HELD IN ABEYANCE**.
>
> **SO ORDERED**."[9]

Thereafter, petitioner's Motion for Reconsideration of the aforesaid Resolution filed on June 23, 2010 was denied by the Court in Division in the Resolution promulgated on August 6, 2010, the disposition of which provides as follows:

> "**IN VIEW OF THE FOREGOING**, petitioner's (herein respondent) **'Compliance (With Urgent Prayer for the Issuance of a Writ of Execution)'** is hereby partially **GRANTED**, while respondent's (herein petitioner) **'Motion for Reconsideration'** is hereby **DENIED** for lack of merit.
>
> **ACCORDINGLY**, considering petitioner's (respondent's) compliance with Resolutions dated November 10, 2009 and June 3, 2010, Philippine British Assurance Co., Inc.'s Surety Bond filed on December 11, 2009 by petitioner (respondent) is hereby **APPROVED**.
>
> On the basis of the posting of the new surety bond, the Commissioner of Customs is hereby ordered to immediately release to petitioner (respondent) the subject generator sets.

[9] Assailed Resolution dated June 3, 2010, Docket, pp. 39-40.

SO ORDERED."[10]

Hence, this recourse before the Court *En Banc* praying that: (a) a temporary restraining order or status quo order and/or writ of preliminary injunction be issued enjoining the Court in Division from enforcing the assailed Resolutions dated June 3, 2010 and August 6, 2010; (b) the assailed Resolution dated August 6, 2010 of the Court in Division be set aside; (c) Bond G(16) No. 16552 issued by PBAC be disapproved; and (d) PBAC be declared disqualified from acting as respondent's surety.

As directed in the Resolutions dated November 9, 2010[11] and December 2, 2010[12], NPCA filed its Comment[13] to the instant Petition for Review on December 6, 2010. Thereafter, on January 4, 2011[14], the parties were ordered to file their respective Memorandum within thirty (30) days from notice. Both parties complied, NPCA on February 9, 2011[15] and the COC on March 22, 2011[16]. Correspondingly, this case was considered submitted for decision on April 20, 2011.[17]

Hence, this Decision.

THE ISSUES

As proposed by both parties in their memoranda, the following issues are submitted for the Court's consideration:

1. Whether or not the instant Petition for Review was seasonably filed;

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[10] Assailed Resolution dated August 6, 2010, Docket, pp. 46-47.
[11] Docket, pp. 153-155.
[12] Ibid., at p. 158.
[13] Id., at pp. 159-170.
[14] Resolution dated January 4, 2011, Docket pp. 172-174.
[15] Respondent's Memorandum, Docket, pp. 175-190.
[16] Petitioner's Memorandum, Docket, pp. 248-272.
[17] Resolution dated April 20, 2011.

2. Whether or not PBAC is qualified to transact business with the Court of Tax Appeals under A.M. No. 04-7-02-SC;

3. Whether or not the surety bond posted by respondent should be double the value of the subject equipment; and

4. Whether or not the Motion for Reconsideration filed by petitioner before the Court in Division on June 23, 2010 was fatally defective for failure to comply with notice of hearing requirement.

Petitioner's Arguments:

In support to the instant petition, petitioner submits that the Court in Division erred in denying petitioner's Manifestation and Motion for the Disqualification of the PBAC on the following grounds:

a. That PBAC's outstanding bond liability with the Bureau of Customs disqualifies it from acting as respondent's surety under Customs Memorandum Order (CMO) Nos. 22-2003 and 7-2007;

b. That sureties seeking to transact business before the Honorable Court involving customs cases must comply with A.M. No. 04-7-02-SC as well as CMO No. 22-2003; and

c. That Section 6, Rule 10 of the CTA Rules requires that the amount of the bond be double that of the subject properties.

Moreover, petitioner argues that the instant Petition was timely filed with this Court through registered mail on September 8, 2010 and duly received by this Court on September 27, 2010, and thus, the other copy of the same Petition in this case which was received by the Court on September 14, 2010, as alleged by respondent, was merely an advance copy; that the hearing on July 9, 2010 on petitioner's subject Motion for Reconsideration was set in conformity with the calendar of the Court in Division itself, and even granting that said motion was defective, respondent itself waived said flaw when it filed its opposition thereto; and that the main petition remains justiciable notwithstanding the release of the three subject shipments.

Respondent's Counter-Arguments:

Respondent, on the other hand, counters among others, that the instant Petition for Review was filed out of time considering that the receiving stamp of the Court found on the upper left portion of the same reveals that it was actually filed only on September 14, 2010, and not September 8, 2010. Worse, the instant Petition was filed *via* a private courier (LBC), a mode not officially recognized by the Rules of Court.

Furthermore, as correctly ruled by the Court in Division, PBAC is qualified to transact business with the Court of Tax Appeals as it complied with the requirements set forth under A.M. No. 04-7-02-SC. CMO No. 22-2003 issued by the BOC is inapplicable in the present case since it is merely an administrative order, and the judicial bond required herein constitutes a special class of contract of guaranty which must comply only with A.M. No. 04-7-02-SC.

Lastly, it is respondent's position that there is no rule requiring the amount of surety bond to be double the value of the subject equipment. Section 6, Rule 10 of the Revised Rules of the Court of Tax Appeals (CTA)[18] merely provides a ceiling as to the amount of bond which the Court may require from the party concerned.

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[18] SEC. 6. *Hearing of the motion.* – The movant shall, upon receipt of the opposition, set the motion for hearing at the next available motion day, and the Court shall give preference to the motion over all other cases, except criminal cases. At the hearing, both parties shall submit their respective evidence. **If warranted, the Court may grant the motion if the movant shall deposit with the Court an amount in cash equal to the value of the property or goods under dispute or filing with the Court of an acceptable surety bond in an amount not more than double the disputed amount or value.** Xxx." *(Emphasis Ours)*

THE COURT EN BANC'S RULING

The petition will not prosper.

A careful and closer look at the arguments set forth by petitioner readily reveals that the instant Petition for Review was prematurely filed before the Court *En Banc*.

According to petitioner, the Court in Division's Resolution dated August 6, 2010 which denied his Motion for Reconsideration of the Resolution dated June 3, 2010 should be set aside considering that the surety bonding company (PBAC) failed to comply with the requirements set forth in CMO No. 22-2003 issued by the BOC, and with Section 6, Rule 10 of the Revised Rules of the CTA requiring that the amount of the bond be double that of the subject properties. For ready reference, the dispositive portion thereof reads:

> "**IN VIEW OF THE FOREGOING**, petitioner's (herein respondent) **'Compliance (With Urgent Prayer for the Issuance of a Writ of Execution)'** is hereby partially **GRANTED**, while respondent's (herein petitioner) **'Motion for Reconsideration'** is hereby **DENIED** for lack of merit.
>
> **ACCORDINGLY**, considering petitioner's (respondent's) compliance with Resolutions dated November 10, 2009 and June 3, 2010, Philippine British Assurance Co., Inc.'s Surety Bond filed on December 11, 2009 by petitioner (respondent) is hereby **APPROVED**.
>
> On the basis of the posting of the new surety bond, the Commissioner of Customs is hereby ordered to immediately release to petitioner (respondent) the subject generator sets.
>
> **SO ORDERED**."[19] *(Underscoring Ours)*

After careful consideration of the entire records of CTA Case No. 7742, it appears that the case is still pending before the Third Division of this Court. Clearly therefore, said proceedings have not been terminated as the Court *a*

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[19] Supra., see note 10.

quo still continues to hear the case after the issuance of the assailed Resolutions. Upon verification, these are the subsequent judicial actions and legal incidents, and other succeeding resolutions issued by the Court in Division, to wit:

ACTION	DATE	NATURE
Minutes of Hearing	8/9/2010	Hearing was cancelled and the continuation of the presentation of evidence for NPC Alliance Corporation (NPCA) was reset to September 13, 2010. Counsel for the Commissioner of Customs (COC) was present during said hearing.
Urgent Ex Parte Motion	8/12/2010	Filed by NPCA
Resolution	8/12/2010	In view of the Court's Resolution dated August 6, 2010, partially granting NPCA's "Compliance (With Urgent Prayer for the Issuance of a Writ of Execution)" filed on June 17, 2010, and denying Commissioner of Customs' (COC) "Motion for Reconsideration (of the Resolution dated June 3, 2010)" filed on June 23, 2010, NPC's Reply filed on August 5, 2010 was considered moot.
Resolution	8/20/2010	COC was ordered to comment on NPCA's Urgent Ex Parte Motion filed on August 12, 2010.
Application for Subpoena Ad Testificandum and Duces Tecum	8/26/2010	Filed by NPCA
Subpoena Duces Tecum and Ad Testificandum	8/26/2010	Issued by the Executive Clerk of Court of the Third Division
Minutes of Hearing	9/27/2010	The continuation of the presentation of evidence for NPCA was reset on October 18, 2010. Counsel for the Commissioner of Customs (COC) attended said hearing.
Minutes of Hearing	10/18/2010	The continuation of the presentation of evidence for NPCA was reset on December 8, 2010. Counsel for NPCA manifested that after his next witness, it still has one other witness to present. Counsel for the Commissioner of Customs (COC) attended said hearing.
Application for Subpoena Ad Testificandum and Duces Tecum	11/22/2010	Filed by NPCA
Subpoena Duces Tecum and Ad Testificandum	11/22/2010	Issued by the Executive Clerk of Court of the Third Division

Minutes of Hearing	12/8/2010	NPCA's witness testified and the continuation of the testimony was set on February 9, 2011.
Resolution	2/7/2011	In view of Office Order No. 09-2011 dated February 2, 2011 requiring all the Justices to attend the CTA Strategic Planning Workshop on February 9 to 10, 2011 at Tagaytay Highlands, the cross-examination of NPCA's witness previously scheduled on February 9, 2011 was cancelled and reset to March 16, 2011.
Minutes of Hearing	3/16/2011	Counsel for COC completed his cross-examination of NPCA's witness, and the continuation of presentation of another witness by NPCA was set on April 27, 2011.
Minutes of Hearing	4/27/2011	Hearing was reset to May 30, 2011 due to absence of witness and counsel for COC.
Application for Subpoena Ad Testificandum and Duces Tecum	5/19/2011	Filed by NPCA
Subpoena Duces Tecum and Ad Testificandum	5/23/2011	Issued by the Executive Clerk of Court of the Third Division
Minutes of Hearing	5/30/2011	The continuation of the presentation of evidence for NPCA was reset on July 11, 2011. Counsel for the COC was present.
Minutes of Hearing	7/11/2011	Hearing was reset to August 15, 2011, without objection from counsel for the COC.
Minutes of Hearing	8/15/2011	Hearing was reset to September 26, 2011 for the continuation of presentation of evidence for NPCA.

From the foregoing proceedings, it is readily apparent that CTA Case No. 7742 is still ongoing trial as the parties have yet to complete their respective presentation of evidence before the Court *a quo*. As a matter of fact, petitioner herein has not even commenced the presentation of his evidence before the Court in Division. Indubitably therefore, the assailed Resolution dated August 6, 2010 does not finally dispose of the case.

A cursory reading of the instant Petition For Review shows that petitioner elevated his case to the Court *En Banc* by way of an ordinary appeal pursuant to Section 2, paragraph (d), Rule 4 of the Revised Rules of Court of Tax Appeals and assailed the subject Resolutions dated June 3, 2010 and August 6, 2010 of the Court in Division. Section 2(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> "SEC. 2. *Cases within the Jurisdiction of the Court en Banc* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
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> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
>
> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; xxx"

The aforesaid provision should be read in relation to Rule 8, Sections 1 and 3(b), which state:

> "SECTION 1. *Review of cases in the Court en Banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
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> xxx xxx xxx
>
> SEC. 3. *Who may appeal; period to file petition.* –
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> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. *(Rules of Court, Rule 42, sec. 1a)*"

Based on the above-quoted provisions, an appeal from the decision or resolution of the Court in Division on a motion for reconsideration or new trial, falls under the exclusive appellate jurisdiction of the Court *En Banc* pursuant to Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282,[20] in relation to Section 2(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals.

It must be noted however that the decision or order which is appealable to the Court *En Banc* is that which has resolved the case with finality, and which, in effect, terminates or finally disposes of a case, as it leaves nothing to be done by the court as the case has finally been decided on the merits.

Considering that the assailed Resolution dated August 6, 2010 is merely interlocutory, as it still leaves something to be done by the court *a quo*, the same may not be subject of review under the afore-quoted Revised Rules of the Court of Tax Appeals. In fact, Section 1, Rule 41 of the 1997 Rules of Civil Procedure, as amended, which applies suppletorily to proceedings before the Court of Tax Appeals, expressly provides that no appeal may be taken from an interlocutory order, to wit:

> "Section 1. *Subject of appeal.*—An appeal may be taken from a judgment or **final order** that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> xxx xxx xxx
>
> (c) **An interlocutory order** *(Emphasis supplied.)*"

"Interlocutory is defined as:

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[20] An Act Expanding the Jurisdiction of the Court of Tax Appeals.

> Provisional; interim; temporary; not final. Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy."[21]

The proper procedure that petitioner should have taken in this case was to await for the final termination of the proceedings before the Court in Division, prior to the filing of the instant petition for review, because it is a well-settled rule that only final orders or judgments on the merits may be the subject of appeal. This rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal. To allow appeals from interlocutory orders would result in the "sorry spectacle" of a case being a subject of a counter-productive ping-pong to and from the trial court, as often as the trial court is perceived to have made an error in rationale for any of its interlocutory resolutions.[22]

In the light of the foregoing discussions and considering that the assailed Resolution dated August 6, 2010 is only a resolution of an incident (i.e. surety bond compliance) in CTA Case No. 7742, which is not appealable because it does not finally dispose of the case on the merits, but leaves something to be done by the Court in Division, the instant Petition for Review is premature, and should be dismissed.

Clearly therefore, when petitioner filed through registered mail the instant Petition before the Court *En Banc* on September 8, 2010, the

[21] H. Black, BLACK'S LAW DICTIONARY (5th ed., 1979).
[22] *Go vs. Court of Appeals*, 358 Phil. 214, 223.

proceedings before the Court in Division has not ended, as there was still the need to resolve the main issues presented before it, which are as follows:

> "1. Whether or not fraud attended the subject importations;
>
> a. Whether or not NPCA undervalued its first shipment;
> b. Whether or not NPCA misrepresented its second shipment to be an inward shipment from abroad;
> c. Whether or not NPCA violated the conditions of the DOF's May 10, 2007 indorsement which provided that the three (3) shipments shall be for purposes of 'exhibition' under Section 105 (i) of the Tariff and Customs Code of the Philippines , as amended;
>
> 2. Whether or not the prosecution has established substantial evidence to warrant the forfeiture of the subject importations; and
>
> 3. Whether or not the right of the consignee, the herein petitioner (respondent), to procedural due process was violated."[23]

Consequently, the Court *En Banc* has no recourse but to dismiss this case.

WHEREFORE, in view of the foregoing considerations, the instant petition is hereby **DENIED** for lack of merit; and accordingly **DISMISSED** for being premature.

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

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[23] Supra., see note 4.

(On Leave)

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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