REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

L.T.J.S. STORE, represented by its Owner/Proprietor MR. ANTONIO DE JESUS SILVA, *Petitioner,*	**CTA Case No. 10583**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
HON. DISTRICT COLLECTOR OF CUSTOMS, Port of MICP, North Harbor, Port Area, Manila; and HON. REY LEONARDO GUERERRO, Commissioner of Customs, South Harbor, Port Area, Manila, *Respondents.*	Promulgated: MAR 29 2022 11:35am

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RESOLUTION

On September 23, 2021, the Court dismissed petitioner's *Petition for Duty and Tax Refund* for lack of jurisdiction and for lack of proper Verification.

On November 8, 2021, the Court received petitioner's *Motion for Leave to Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund,* with attached *Amended Petition for Review of Protest and Appeal for Duty and Tax Refund* and *Entry of Appearance of Counsel for Petitioner,* filed through registered mail on October 27, 2021.

On December 7, 2021, the Court denied petitioner's *Motion for Leave to Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund,* with attached *Amended Petition for Review of Protest and Appeal for Duty and Tax Refund.*

On March 9, 2022, the Court received petitioner's *Motion for Reconsideration of Denial of Petitioner's Motion for Leave To Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund*, posted on February 24, 2022.

In its *Motion*, petitioner alleges that its *Motion for Leave to Admit its Amended Petition* must not be treated as a motion for reconsideration or new trial under Rule 15; that petitioner must be allowed to amend its petition one time to state a cause of action unless it is clear that petitioner will not be able to state a cause of action; that its amended pleading is a revision of its pleading filed in an action; and, that the amended pleading involves a claim for refund of erroneously or illegally collected over-charges of customs duty and tax refund.

Petitioner also points out that respondents have not made any response despite having been furnished with copies of its pleadings.

The motion is denied.

It is reiterated that the Court of Tax Appeals (CTA) lacks jurisdiction over the subject matter herein, considering that its jurisdiction is limited to the decisions of the Commissioner on Customs (COC). In the September 23, 2021 Resolution, the CTA's lack of jurisdiction was discussed as follows:

> The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction. The jurisdiction of the CTA regarding liability for customs duties, fees and other money charges is provided under Section 7(a)(4) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:
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> > SEC. 7. Jurisdiction.—The CTA shall exercise:
> >
> > (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> > xxx
> >
> > (4) **Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges,** seizures, detention or release of property

> affected, fines, forfeitures or other penalties in relation thereto, **or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;** (*boldfacing supplied*)

In relation thereto, Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, specifically includes the decision of the COC as one of the cases falling within the jurisdiction of the CTA in Division, as follows:

> SEC. 3. Cases within the **jurisdiction of the Court in Division**. – The Court shall exercise:
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> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
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> xxx
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> (4) **Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges,** seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, **or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;** (*boldfacing supplied*)

Corollary thereto, Section 3(a), Rule 8 of the RRCTA, as amended, provides the period within which the decision of the COC may be appealed with the CTA, *to wit*:

> SEC. 3. *Who may appeal; period to file petition.* – (a) **A party adversely affected** by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or **by a decision or ruling of the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction, **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the

> Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (*boldfacing supplied*)

> It is clear from the afore-cited provisions that the CTA in Division shall exercise exclusive original jurisdiction to review by appeal decisions of the COC in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs.

> In the present case, however, an examination of the allegations in the Petition for Duty and Tax Refund shows that the COC has yet to render a decision on petitioner's Protest and Appeal for Duty and Tax Refund filed on March 26, 2021. The filing of the Petition for Duty and Tax Refund is premised on the alleged inaction of the COC. Inaction by the COC on cases involving liability for customs duties, fees or other money charges is not one of the subject matters upon which the CTA exercises jurisdiction. Thus, the Court lacks jurisdiction over the subject matter of the Petition.[1]

The abovequoted Resolution dated September 23, 2021 was received by petitioner on October 13, 2021. Under Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA),[2] petitioner had only until November 11, 2021 within which to file a motion for reconsideration. However, no motion for reconsideration was filed by petitioner, per Records Verification dated November 18, 2021. Thus, the Resolution dated September 23, 2021 dismissing the case has attained finality.

Even if the Court were to relax the rules on finality of the resolution, petitioner's *Motion for Leave to Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund*[3] together with the *Amended Petition for Review of Protest and Appeal for Duty and Tax Refund*,[4] posted on

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[1] Docket, Resolution dated September 23, 2021, pp. 30-32.
[2] Section 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall file a motion for reconsideration or new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question.
[3] Docket, p. 35.
[4] Docket, p. 36-39.

October 27, 2021 and received by the Court on November 8, 2021, do not state that the COC has issued any decision on the subject case which would put the same under the CTA's jurisdiction pursuant to RA No. 1125, as amended by RA No. 9282, and the RRCTA.

Even with the *Amended Petition for Review of Protest and Appeal for Duty and Tax Refund*, the CTA still has no jurisdiction over the case, in the absence of a decision from the COC.

Thus, the Court finds no reason to grant petitioner's *Motion for Leave to Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund* posted on October 27, 2021, or the instant *Motion for Reconsideration of Denial of Petitioner's Motion for Leave To Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund*, posted on February 24, 2022.

WHEREFORE, petitioner's *Motion for Reconsideration of Denial of Petitioner's Motion for Leave To Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund* is **DENIED**.

SO ORDERED.

(With Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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Respondents.

CTA Case No. 10583

Members:

DEL ROSARIO, *P.J., Chairperson*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:
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SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

Records reveal the following:

- July 9, 2021 – Petitioner filed its Petition for Duty and Tax Refund;

- September 23, 2021 – The Court issued a Resolution dismissing the Petition for Review;

- October 13, 2021 – Petitioner received the Resolution dated September 23, 2021;

- November 8, 2021 – The Court received petitioner's **Motion for Leave To Admit Amended Petition for Review of Protest and Appeal for Duty and Tax**

Refund (hereinafter referred to as "Motion for Leave To Admit Amended Petition for Review") which was posted on October 27, 2021;

- December 7, 2021 – The Court issued a Resolution denying petitioner's Motion for Leave To Admit Amended Petition for Review;

- March 9, 2022 – The Court received petitioner's **Motion for Reconsideration of Denial of Petitioner's Motion for Leave To Admit Amended Petition for Review of Protest and Appeal for Duty and Tax Refund** (hereinafter referred to as "Motion for Reconsideration") posted on February 24, 2022.

Petitioner received the Resolution dated September 23, 2021 on October 13, 2021. Thus, petitioner had until November 11, 2021 within which to file a motion for reconsideration of the aforesaid Resolution. **Since petitioner failed to file a motion for reconsideration of the Resolution dated September 23, 2021, the dismissal of the Petition for Duty and Tax Refund has become final and executory.**

Anent the present **Motion for Reconsideration**, I submit that the same must be denied for lack of merit.

Both in its **Petition for Duty and Tax Refund** and in its **Amended Petition for Review**, petitioner claims that the customs duties for its rice importation should amount to ₱5,836,659.28 only based on the Transaction Value imposed under Section 701 of Republic Act (RA) No. 10863 or the Customs Modernization and Tariff Act (CMTA), and not the amount of ₱6,950,621.56 which was inappropriately imposed using the Reference Value; thus, there was an alleged over-charging of customs duties by the District Collector amounting to ₱1,113,962.28.

The Statement of Settlement of Duties and Taxes[1] attached to petitioner's Petition for Duty and Tax Refund indicates that petitioner paid the customs duties on March 19, 2021. Thereafter, petitioner allegedly filed a *"Protest and Appeal for Duty and Tax Refund"* on March 26, 2021 before the office of the BOC Commissioner.

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[1] Docket, p. 11.

As there was still no action on petitioner's protest, petitioner filed the Petition for Duty and Tax Refund on July 9, 2021, and the Amended Petition for Review of Protest and Appeal for Duty and Tax Refund on October 27, 2021.

Section 1110 of the CMTA provides:

> "SEC. 1110. *Decision in Protest.* – When a protest is filed in proper form, **the Commissioner shall render a decision within thirty (30) days from receipt of the protest. In case the protest is sustained, in whole or in part, the appropriate order shall be made**, and the entry reassessed, if necessary." *(Boldfacing supplied)*

Relatedly, Section 10.3 of **Customs Administrative Order (CAO) No. 02-2020**,[2] which prescribes the policies, guidelines, procedures on dispute settlement and protest in the BOC, states the following:

> "Section 10. Protest.
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> xxx xxx xxx
>
> 10.3. When a protest is filed in proper form, **the Commissioner shall render a ruling within thirty (30) days from receipt of the protest.** Otherwise, the ruling of the Collector shall be **deemed affirmed** if the Commissioner fails to act on the same." *(Boldfacing supplied)*

As aforestated, the BOC Commissioner failed to act on the "Protest and Appeal for Duty and Tax Refund" filed on **March 26, 2021** within thirty (30) days from the filing thereof; thus, upon the lapse of the said thirty (30)-day period on **April 25, 2021**, the BOC Commissioner is deemed to have affirmed the ruling of the District Collector of Customs. There was, therefore, a deemed denial decision by the BOC Commissioner of petitioner's protest.

This deemed denial decision is appealable to this Court pursuant to Section 7(a)(4) of RA No. 1125, as amended by RA No. 9282, and Section 3(a)(4), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), which state:

> "Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[2] Subject: Dispute Settlement and Protest.

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xxx xxx xxx

4. **Decisions of the Commissioner of Customs in cases involving liability for customs duties**, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs[.]" *(Boldfacing supplied)*

"RULE 4
JURISDICTION OF THE COURT

SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(4) **Decisions of the Commissioner of Customs in cases involving liability for customs duties**, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures of other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs[.]" *(Boldfacing supplied)*

Based on the foregoing, since there was a deemed denial decision of petitioner's "Protest and Appeal for Duty and Tax Refund" on April 25, 2021, petitioner had until **May 25, 2021** within which to file its Petition for Review before this Court. **The filing of the Petition for Duty and Tax Refund on July 9, 2021 and the Amended Petition for Review on October 27, 2021 were clearly made beyond the thirty (30)-day reglementary period to appeal**. Thus, the Court has not acquired jurisdiction to take cognizance of the present Petition for Review.

All told, I CONCUR in the result.

ROMAN G. DEL ROSARIO
Presiding Justice