REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

L.T.J.S. STORE, represented by its Owner/Proprietor MR. ANTONIO DE JESUS SILVA,
Petitioner,

- versus -

HON. DISTRICT COLLECTOR OF CUSTOMS, Port of MICP, North Harbor, Port Area, Manila**; and HON. REY LEONARDO GUERRERO, Commissioner of Customs,** South Harbor, Port Area, Manila,
Respondents.

CTA CASE NO. 10539

Members:

CASTAÑEDA, JR., *Chairperson,*
BACORRO-VILLENA, and
CUI-DAVID, *JJ.*

Promulgated:

APR 2 0 2022 8:45 AM

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RESOLUTION

For resolution is petitioner's **Motion for Reconsideration (Re: Resolution of Dismissal Promulgated November 12, 2021)**, filed through registered mail on January 6, 2022, and received by this Court on February 15, 2022, with respondent's **Comment (Re: Motion for Reconsideration dated January 5, 2022)**, filed through registered mail on March 22, 2022 and received by this Court on March 31, 2022.

On November 12, 2021, the Court issued the Resolution dismissing petitioner's Petition for Duty and Tax Refund both for procedural and jurisdictional grounds.

In the present motion, petitioner claims that the lack of proper verification or formal defect of certification against forum shopping is not fatal to warrant outright rendition of dismissal of this case. Petitioner contends that the petition in this case should not out-and-out be denied by virtue of the strict adherence to the formalities of rules and procedures, if only to prevent grave injustice to a hapless taxpayer, as in the case of herein petitioner.

According to petitioner, the petition it filed consisted of four pages which actually was accompanied with the corresponding Verification and Certification of Non-Forum Shopping linked up together on Pages 3 to 4 of the pleaded petition. Petitioner claims that regrettably, upon going-over the pleadings once again, it found out that an erroneous typing inscription was inadvertently committed on paragraph 1 of page 3 wherein the representing affiant by the name of Mr. Orlando C. Manuntag, who is the president and general manager of another entity, the Goldmine Rice Marketing, and is not a party in interest to the instant case, was mistakenly indicated therein, instead of correctly entering the name of the right affiant Mr. Antonio De Jesus Silva, who is in fact the one who can qualify in representing on behalf of the juridical personality of herein petitioner L.T.J.S. Store, being its Owner/Proprietor thereof.

So as to serve the ends of justice in attending such circumstances, petitioner earnestly implores that the Court dispense with the strict compliance of the procedural rule; and instead, exercise its discretionary power and authority of considering such honest error and inadvertence as a mere formal defect that must not necessarily render the instant petition fatally defective to warrant its outright dismissal; and as an alternative, to admit correction of the subject error or defect as here and now being rectified through petitioner's submission of a corrected Verification and Certification of Non-Forum Shopping consonant with Section 3, Rule 46 of the Rules of Court being marked as ANNEX "AA" attached to its motion to formally make as part and parcel of the petition that was filed earlier before this Court on May 26, 2021.

Petitioner alleges that the questioned Resolution rendered by the Court adopted *en toto* the position of respondents without allowance; while petitioner's cause of action and arguments as pleaded in its petition were entirely and arbitrarily turned down as without any worth by the Court's dismissing it merely "for lack of jurisdiction and lack of proper verification pursuant to Section 3, Rule

42 of the Rules of Court in relation to Section 1, Rule 42 of the Rules of Court".

Petitioner argues that resolution to this case necessitates a more important deliberation, fair and just appreciation or investigation of a more important and preponderant determination of the legal and factual circumstances and other evidences surrounding the illegal, unlawful, and unjustifiable basis of valuation, imposition and excessive collection of Customs Duties and Taxes raised by petitioner before the Formal District Customs Assessment Office, the District Customs Collector, and the Customs Commissioner. According to petitioner, because of the unjustifiable inaction and unfair delay incurred by the Bureau of Customs office, herein petitioner was compelled to raise its case as a Petition for Review of its Protest and Appeal for Duty and Tax Refund before this Court on May 26, 2021.

Petitioner insists that the Court must give its due course to the instant petition, even if the Verification and Certification Against Forum Shopping were carelessly overlooked in supporting its related petition for a more comprehensive consideration of the State's declared policy of instituting fair and transparent customs and tariff management that will efficiently facilitate international trade, prevent and curtail any form of customs fraud and illegal acts, and modernize customs and tariff administration as mandated in Sec. 101 of RA 10863.

Petitioner contends that the unjustifiable inaction and unreasonable delay caused by respondents gravely and oppressively impaired petitioner's constitutionally guaranteed right to an impartial and speedy disposition of its case, which respondents must not be excused from by simply shielding its omission with the rule of *strictissimi juris* or the strictest interpretation of the law that herein petitioner lacked the proper verification and certification against forum-shopping of its pleaded petition; thereby, accrediting such formal and procedural shortcoming or misgiving of herein petitioner as a fatal conclusion for lack of jurisdiction on the part of this Court to proceed with the petition that certainly undermines the broader interest of justice.

Petitioner claims that with its case being under such exceptional circumstance, a most prudent manner of judicially treating it is by fairly and equitably giving an opportunity for it to remedy its careless misgivings or inadvertent shortcomings and setting aside technical infirmities to fairly and justly give due course to its appeal, if only not to truly defeat the administration of justice.

According to petitioner, the Court certainly does not lack its jurisdiction, claiming that it is even more firmed with added specific mandate and vestment of statutory power and authority of exclusive appellate jurisdiction to review an inaction of the BOC involving its functions under the Customs Law as envisaged under Section 9 of the Revised Rules of the Court of Tax Appeals (RRCTA).

Petitioner states that instead of waiting for an explicit decision or resolution that hangs on the clouds of indeterminate happening, the adversely affected taxpayer, as in the case of herein petitioner, must no longer wait for any decision or resolution to come up, but rather strictly comply with the mandatory period by filing its Petition for Review of its Protest and Appeal for Tax Refund with the CTA within thirty (30) days from the expiration of the period fixed by law to act thereon, whereby a CTA Division shall hear the appeal.

Petitioner argues that its claim for Duty and Tax Refund is in no way subject to any lawful prescription, considering that the District Collector of Customs has not ever acted upon the Protest and Appeal for Duty and Tax Refund that the petitioner submitted before its office on September 23, 2020. Petitioner claims that there is no showing of any explicit action to be based upon in determining a clear point of prescription period. Hence, the period to file an appeal to the Office of the Commissioner of Customs does not have any legitimate basis of determining a beginning to take its course of running.

Petitioner contends that a correlation of Articles 1145 and 2154 of the Civil Code in this case would support its position that the pendency of petitioner's Protest and Appeal submitted before the Office of the Collector of Customs cannot interrupt the running of the prescriptive period under the provision of the afore-cited law on the ground that the office of the Collector of Customs as well as the Office of the Commissioner of Customs are not regular courts of justice, but are administrative agencies of the government that only performs quasi-judicial functions. For this reason, the 30-day prescriptive period for appealing to the CTA must inevitably be made to conform within the six-year prescriptive period as elucidated in the said Articles of the Civil Code, should there be something that is received when there is no right to demand it, and it was unduly delivered or paid either through error, or some kind of injudiciousness, or imprudence. Hence, the Office of the Commissioner of Customs can be compelled to refund the said customs duty and tax over-payment to the claiming petitioner, L.T.J.S. Store. By the inaction of the Commissioner of Customs, the CTA is clothed with its judicial authority to proceed with the required review of the protest and appeal raised before its forum by petitioner who is adversely affected by the official inaction of the District Customs Collector and the Commissioner of Customs in line with Section 9 of the RRCTA. The adversely affected party must strictly comply with the mandatory period by filing its Petition for Review of its Protest and Appeal for Tax Refund with the CTA within thirty (30) days from the expiration of the period fixed by law to act thereon, whereby a CIA Division shall hear the appeal.

Petitioner contends that the unfair and unjustifiable inaction and unreasonable delay of respondents in taking official action of its Protest and Appeal brought by the latter's exhaustion of its administrative remedy before the former's administrative and public offices are tantamount to a violation of the mandatory' provisions intended in Section 16 of the 1987 Constitution, which is the constitutional right to a speedy disposition of the adversely affected petitioner's case raised before the quasi-judicial administrative offices of respondents.

Thus, petitioner prays that the assailed Resolution of Dismissal promulgated on December 3, 2021 [*sic*] be reconsidered and set aside and that the Petition for Review of Protest and Appeal for Duty and Tax Refund [*sic*] of over-payment of customs duties be allowed to proceed in hearing and receiving its relative evidence and in disposing this case with dispatch.

In his comment, respondent argues that, unfortunately, petitioner cannot turn to leniency and equity to persuade the Court, stating that time and again it has been established that the mere invocation of substantial justice is not a magical incantation that will automatically compel the Court to suspend procedural rules. According to respondent, rules of procedure are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed. So it must be here.

Further, respondent contends that an examination of the issues raised in petitioner's Motion for Reconsideration reveals that the same are a mere rehash of the basic issues raised and resolved in the Petition for Duty and Tax Refund. Respondent argues that as already settled by the Court, the petition does not show whether petitioner underwent the procedures for dispute settlement for customs valuation under CAO-02-2020, namely, elevating the matter to the principal appraiser and thereafter to the Chief, Formal Entry Division or equivalent unit, then to the Deputy Collector for Assessment and finally to the District Collector, before appealing by way of protest to respondent Commissioner of Customs.

Additionally, respondent contends that the Court has already stated that it has no jurisdiction over the present case as the same was filed out of time, considering that the appeal to the Court from the Commissioner of Customs' ruling should have been taken within thirty (30) days from October 23, 2020 or until November 22, 2020. The petition was instead, filed way out of time, on May 26, 2021, or 185 days late.

Lastly, respondent avers that considering that all the issues now raised in the motion have already been threshed out by the Court in its Resolution dated November 12, 2021, there is no further need to raise anew the same matters now, which serve only to senselessly exhaust the resources of the government and of this Court.

The instant motion is bereft of merit.

Petitioner downplays the dismissal of its case for both procedural and jurisdictional grounds, claiming that its cause of action and arguments as pleaded in its petition were "entirely and arbitrarily turned down as without any worth by the Court, dismissing it merely 'for lack of jurisdiction and lack of proper verification pursuant to Section 3, Rule 42 of the Rules of Court in relation to Section 1, Rule 42 of the Rules of Court'". Petitioner contends that with its case being under such exceptional circumstance, a most prudent manner of judicially treating it is by fairly and equitably giving an opportunity for it to remedy its careless misgivings or inadvertent shortcomings and setting aside technical infirmities to fairly and justly give due course to its appeal, if only not to truly defeat the administration of justice.

Section 4 of Rule 7 of the Revised Rules of Court, as amended, states:

"Section 4. *Verification.* – Except when otherwise specifically required by law or rule, pleadings need not be under oath or verified.

A pleading is verified by an affidavit of an affiant duly authorized to sign said verification. The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading, and shall allege the following attestations:

(a) The allegations in the pleading are true and correct based on his or her personal knowledge, or based on authentic documents;

(b) **The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation**; and

(c) **The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.**

The signature of the affiant shall further serve as a certification of the truthfulness of the allegations in the pleading.

A pleading required to be verified that contains a verification based on 'information and belief,' or upon 'knowledge, information and belief,' or **lacks a proper verification, shall be treated as an unsigned pleading.** (4a)" (*Emphases supplied*)

As may be gleaned from the foregoing, a pleading is verified by an affidavit of an affiant duly authorized to sign said verification. The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading and allege, among others, that the pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation, and that the factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery. Further, a pleading required to be verified that lacks a proper verification shall be treated as an unsigned pleading.

As pointed out in the assailed Resolution, the petition failed to attest to the matters required under the above-cited Section 4 (b) and (c), Rule 7 of the Rules of Court, as amended. In addition, petitioner did not even properly read its own Verification, considering its allegation in the instant motion that an erroneous typing inscription was inadvertently committed on paragraph 1 of page 3 in that the representing affiant by the name of Mr. Orlando C. Manuntag, who is the President and General manager of another entity, the Goldmine Rice Marketing, and is not a party in interest to this instant case, was mistakenly indicated.

To reiterate, the Verification and Certification of Non-Forum Shopping states that the one who signed it, Mr. Antonio De Jesus Silva, is acting in representative capacity as the President of Goldmine Rice Marketing, and not the named petitioner in this case, which is L.T.J.S. Store. There is also nothing in the records which would show the business registration of petitioner. Clearly, the petition lacks proper verification, and should be treated as an unsigned pleading producing no legal effect.[1]

In any case, even if petitioner filed a proper verification, the petition must still be dismissed.

A reading of the instant motion shows that petitioner failed to discharge its burden of proving that exceptionally meritorious circumstances exist which may justify a deviation from the rule on timely filing of appeals, offering no explanation at all for its 185-day delay in filing its petition. As held by the Supreme Court in *Republic vs. Court of Appeals, et al.*[2]:

> **"Nor can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, <u>the failure to perfect</u>**

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[1] *Commissioner of Internal Revenue vs. Apo Cement Corporation*, G.R. No. 193381, February 8, 2017, citing *Negros Oriental Planters Association, Inc. vs. Hon. Presiding Judge of RTC-Negros Occidental, Branch 52, Bacolod* City, 595 Phil. 1158 (2008) [Per J. Chico-Nazario, Third Division].

[2] G.R. No. 129846, January 18, 2000.

> **an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem as it deprives the appellate court of jurisdiction over the appeal.** The failure to file the notice of appeal within the reglementary period is akin to the failure to pay the appeal fee within the prescribed period. In both cases, the appeal is not perfected in due time. As we held in *Pedrosa v. Hill,* the requirement of an appeal fee is by no means a mere technicality of law or procedure, but an essential requirement without which the decision appealed from would become final and executory. The same can be said about the late filing of a notice of appeal.
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> The fact is that petitioner did not only fail to appeal from the main order of the trial court dismissing its complaint. It did not only fail to appeal on time from the order denying reconsideration. Petitioner likewise failed to make a timely appeal to this Court from the resolution of the appellate court dismissing its appeal." (*Emphasis and underscoring supplied*)

In this case, the alleged ruling of respondent District Collector was deemed affirmed by respondent Commissioner of Customs, considering the alleged failure of respondent Commissioner of Customs to act on petitioner's protest within thirty (30) days from September 23, 2020 or until October 23, 2020. Thus, petitioner should have filed a motion for reconsideration with respondent Commissioner of Customs within fifteen (15) calendar days from October 23, 2020 or until November 7, 2020 or, assuming that the inaction is appealable to this Court, appeal to the Court respondent Commissioner of Customs' ruling affirming respondent District Collector's ruling within 30 calendar days from October 23, 2020 or until November 22, 2020. Clearly, even if petitioner properly filed a Petition for Review instead of a Petition for Duty and Tax Refund, the same is already filed out of time considering it was filed only on May 26, 2021 or 185 days late.

As for petitioner's claim that the thirty (30)-day prescriptive period for appealing to the CTA must inevitably be made to conform to the six-year prescriptive period as stated in Articles 1145[3] and

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[3] Art. 1145. The following actions must be commenced within six years:
(1) Upon an oral contract;
(2) Upon a quasi-contract.

2154[4] of the Civil Code, the rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.[5] Applying the foregoing, the thirty (30)-day prescriptive period under Section 11[6] of Republic Act No. 1125, as amended, prevails over the six-year prescriptive period under the Civil Code.

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[4] Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. (1895)

[5] *Manila Electric Company vs. City Assessor, et al.,* G.R. No. 166102, August 5, 2015, *citing Vinzons-Chato vs. Fortune Tobacco Corporation,* 552 Phil. 101, 111 (2007).

[6] SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: *Provided, however,* That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc.*

All other cases involving rulings, orders or decisions filed with the CTA as provided for in Section 7 shall be raffled to its Divisions. A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration or new trial before the same Division of the CTA within fifteen (15) days from notice thereof: *Provided, however,* That in criminal cases, the general rule applicable in regular Courts on matters of prosecution and appeal shall likewise apply.

No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: *Provided, however,* That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

In criminal and collection cases covered respectively by Section 7(b) and (c) of this Act, the Government may directly file the said cases with the CTA covering amounts within its exclusive and original jurisdiction.

As held in *Ti vs. Diño*,[7] procedural rules are laid down for the benefit of all and should not be made dependent upon a suitor's sweet time and own bidding:

> "It must be emphasized that procedural rules are designed to facilitate the adjudication of cases. **Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, the Court allows a relaxation in the application of the rules, it never intends to forge a weapon for erring litigants to violate the rules with impunity.** The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that **every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice**. Party-litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules, for these rules illumine the path of the law and rationalize the pursuit of justice. It is this symbiosis between form and substance that guarantees that discernible result.
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> The use of the words 'substantial justice' is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed, simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons, when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Thus, as called upon by the respondents, the Court yields to the time-honored principle 'Justice is for all.' Litigants must have equal footing in a court of law; **the rules are laid down for the benefit of all and should not be made dependent upon a suitor's sweet time and own bidding.**" (*Emphasis supplied*)

Unfortunately, the inevitable consequence of petitioner's grave inadvertence is to render the alleged ruling of respondent District

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[7] G.R. No. 219260, November 6, 2017.

Collector, as deemed affirmed by respondent Commissioner of Customs' inaction, final and executory. This Court, thus, acted properly in dismissing the instant petition.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re: Resolution of Dismissal Promulgated November 12, 2021)** is **DENIED** for lack of merit.

SO ORDERED.

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice