REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

KRAFT FOODS (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS,
Respondent,

SUGAR REGULATORY ADMINISTRATION,
Intervenor.

C.T.A. EB NO. 326
(C.T.A. CASE NO. 7306)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUL 18 2008

2:00 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition For Review filed by Kraft Foods (Philippines), Inc. (hereafter "Kraft") under *Section 11 of RA 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended,* which seeks to reverse and set aside the Resolution dated June 14, 2007 dismissing petitioner Kraft's

Petition For Review on the ground of forum shopping issued by the First Division of this Court in C.T.A. Case No. 7306, the dispositive portion of which reads, as follows:

> "**WHEREFORE,** respondent and intervenor's "Motion To Cite Petitioner For Forum Shopping" is hereby **GRANTED.** Accordingly, this instant Petition For Review is **DISMISSED.**
>
> **SO ORDERED.**"

and the Resolution dated October 18, 2007, denying petitioner's "Motion For Reconsideration" and "Supplement To the Motion for Reconsideration", the dispositive portion of which reads, as follows:

> "**WHEREFORE,** petitioner's Motion For Reconsideration and Supplement To Motion For Reconsideration are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

<u>THE FACTS</u>

On August 8, 2005, petitioner Kraft filed a Petition For Review (with an application for a temporary restraining order and a writ of preliminary injunction) with this Court, docketed as C.T.A. Case No. 7306.

On August 17, 2005, petitioner filed an "Urgent Manifestation with Urgent Reiteration of Prayer for the Immediate Issuance of a Temporary Restraining Order", which the First Division granted in its Resolution dated August 18, 2005. Accordingly, the respondent Commissioner of Customs or any of his agents were enjoined from forfeiting the cash bond of P13,966,153.00 posted by petitioner with respect to its May 24, 2004 Tang/Kool Aid Importation, effective for a period of 30 days until August 18, 2005.

On August 23, 2005, respondent Commissioner of Customs filed his "Motion For Reconsideration (of Resolution dated August 18, 2005)".

On August 25, 2005, respondent Commissioner of Customs filed his answer.

On September 2, 2005, petitioner filed its "Opposition (To Respondent's Motion For Reconsideration dated August 23, 2005)".

On September 7, 2005, petitioner filed its Formal Offer of Evidence (for the application for a temporary restraining order and/or writ of preliminary injunction)".

On September 7, 2005, respondent Commissioner of Customs filed his "Reply (To Opposition dated September 2, 2005)".

On September 12, 2005, petitioner filed its "Reply" (to Respondent's Answer)".

On September 12, 2005, petitioner filed its "Rejoinder (To Respondent's Reply (to Opposition dated September 2, 2005)".

On September 13, 2005, respondent Commissioner of Customs filed his "Comment (on Petitioner's Formal Offer of Evidence dated September 6, 2005)".

On September 15, 2005, petitioner filed its "Reply to Respondent's Comment dated September 12, 2005 (on Kraft's Formal Offer of Evidence re: its application for a temporary restraining order and/or writ of preliminary injunction)".

On September 19, 2005, petitioner filed an "Urgent Ex-Parte Motion For Resolution of Petitioner's Application For a Writ of Preliminary Injunction and Urgent Motion For Extension of Temporary Restraining Order", which the First Division granted in its Resolution dated September 20, 2005. The application for a writ of preliminary injunction was set for hearing on September 27, 2005.

At the scheduled hearing of the application for a writ of preliminary injunction on September 27, 2005, Atty. Carlos So, District Collector, Manila International Container Port, Bureau of Customs, appeared and testified. Thereafter, both parties were granted 3 days from September 27, 2005 within which to file their simultaneous memoranda, afterwhich the application for a writ of preliminary injunction shall be deemed submitted for resolution.

On September 30, 2005, petitioner filed its "Memorandum (Re: Prayer For Writ of Preliminary Injunction)", and thereafter, a "Manifestation and Withdrawal of Application for a Writ of Preliminary Injunction" in view of the testimony of District Collector Carlos So during the September 27, 2005 hearing that he would not cause the forfeiture of the cash bond of P13,966,153.00 posted by Kraft, which cash bond is in the custody of respondent, until this case is resolved with finality.

On October 5, 2005, respondent Commissioner of Customs filed his "Motion For Reconsideration (of Resolution dated September 20, 2005)".

On October 6, 2005, petitioner filed its "Manifestation Re: Respondent's Motion For Reconsideration".

On October 6, 2005, the Sugar Regulatory Administration (hereafter "respondent intervenor SRA") filed its "Motion For Leave of Court To Intervene and File Answer In Intervention", attaching thereto its "Answer In Intervention".

On October 14, 2005, petitioner filed its "Opposition (To SRA's Motion For Leave of Court To Intervene and File Answer In Intervention)".

On October 14, 2005, the First Division denied petitioner's Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction in view of the "Manifestation and Withdrawal of Application for a Writ of Preliminary Injunction" filed by the petitioner on September 30, 2005.

On October 25, 2005, petitioner filed a "Motion To Elevate Records", which the First Division granted in its Resolution dated November 24, 2005.

On October 28, 2005, petitioner filed its Pre-Trial Brief.

On November 9, 2005, the Sugar Regulatory Administration filed its "Reply (To Opposition To SRA's Motion For Leave of Court To Intervene and File Answer In Intervention)".

On December 2, 2005, the First Division denied the "Motion For Leave of Court to Intervene and File Answer In Intervention", and the case was set for pre-trial on December 9, 2005.

On December 7, 2005, respondent Commissioner of Customs filed his Pre-Trial Brief.

On December 27, 2005, the Sugar Regulatory Administration filed a "Motion For Reconsideration" of the Resolution dated December 2, 2005.

On February 13, 2006, petitioner filed its "Manifestation and Opposition (to SRA's Motion For Reconsideration dated December 21, 2005)", which the First Division admitted in its Resolution dated

February 14, 2006, and respondent was granted 10 days from receipt of petitioner's Opposition to file his Reply.

On March 6, 2006, the Sugar Regulatory Administration filed its "Manifestation and Reply (To Manifestation and Opposition dated February 13, 2006)".

On March 20, 2006, petitioner filed its "Motion For Leave To File and To Admit Rejoinder".

On April 10, 2006, the Sugar Regulatory Administration filed its "Opposition (To Motion for Leave To File and To Admit Rejoinder dated March 20, 2006)".

On April 26, 2006, the First Division admitted the Sugar Regulatory Administration's Answer-In-Intervention and set the case for pre-trial on May 26, 2006.

On May 30, 2006, respondent Sugar Regulatory Administration filed its Pre-Trial Brief.

On June 28, 2006, the parties filed their "Joint Stipulation of Facts and Issues".

On June 30, 2006, the First Division approved the "Joint Stipulation of Facts and Issues" and the pre-trial was deemed terminated.

On July 3, 2006, petitioner filed a "Manifestation" stating that on June 28, 2006, petitioner filed a Petition For Prohibition with the Court of Appeals, docketed as CA-G.R. SP No. 95027, entitled "Kraft Foods (Philippines), Inc. vs. Sugar Regulatory Administration, as respondent, and Bureau of Customs, as necessary party", raising the issue of whether or not Sugar Order No. 4 s. of 2001-02 and Nos. 7 and 7-a, both of 2004, are valid and within the power and jurisdiction of the SRA to enact.

On December 20, 2006, the First Division granted petitioner's "Motion For the Issuance of Subpoena Duces Tecum".

On December 28, 2006, respondent and intervenor SRA filed a "Motion to Cite Petitioner For Forum Shopping".

On January 12, 2007, petitioner filed its "Opposition (To Motion to Cite Petitioner For Forum Shopping Dated December 26, 2006)".

On March 2, 2007, petitioner filed its "Rejoinder (To Respondent's and Intervenor's Reply (To Opposition to Motion to Cite Petitioner For Forum Shopping) dated February 13, 2007)".

On June 14, 2007, the First Division granted the "Motion to Cite Petitioner For Forum Shopping" and dismissed the Petition For Review.

On July 12, 2007, petitioner filed a "Motion For Reconsideration" of the Resolution dated June 14, 2007.

On August 8, 2007, petitioner filed a "Supplement To the Motion For Reconsideration dated July 12, 2007".

On August 28, 2007, respondent and intervenor filed their "Comment (On Motion For Reconsideration dated July 12, 2007, Supplemental Motion For Reconsideration dated August 7, 2007 and Motion to Set For Hearing For Oral Argument dated July 17, 2007)".

On October 18, 2007, the First Division denied petitioner's "Motion For Reconsideration" and "Supplement To the Motion For Reconsideration" for lack of merit.

ISSUES

Hence, the present Petition For Review raising the following issues:

I

THE HONORABLE FIRST DIVISION OF THIS HONORABLE COURT RULED THAT THERE WAS

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FORUM SHOPPING WITHOUT MAKING A FINDING THAT THE FIRST DIVISION PETITION CONSTITUTES *LITIS PENDENTIA* IN RESPECT OF EITHER THE DOF APPEAL OR THE CA PETITION, AS IN FACT THE ELEMENTS OF *LITIS PENDENTIA* ARE NOT PRESENT IN EITHER CASE. SUCH A FINDING OF *LITIS PENDENTIA* IS ESSENTIAL TO ANY FINDING OF FORUM SHOPPING.

II

THE HONORABLE FIRST DIVISION GRAVELY ERRED IN RULING THAT THE CA PETITION MAY RENDER MOOT THE FIRST DIVISION PETITION. THERE CAN BE NO MOOTING SINCE THE ISSUE OF THE VALIDITY OF THE CLEARANCE REQUIREMENTS AND FEES, AS WELL AS THE IMPOSITION OF SUGAR LIENS UNDER THE SUGAR ORDERS ARE WHOLLY DISTINCT FROM THE ISSUE ON THE TARIFF CLASSIFICATION OF THE TANG/KOOL-AID PRODUCTS AND THE ANNULMENT OF THESE ORDERS WILL NOT IN ANY WAY AFFECT THE APPLICABLE TARIFF RATE OF THESE PRODUCTS.

III

THERE CAN BE NO VEXATION CAUSED TO EITHER THE HONORABLE COURT OR THE RESPONDENTS SINCE KRAFT MERELY SOUGHT TO PROTECT ITS RIGHTS BY RESORTING TO THE PROPER AND ONLY REMEDY PROVIDED BY LAW. SIMILARLY, KRAFT DID NOT FILE THE FIRST DIVISION PETITION BECAUSE IT ANTICIPATED THAT THE DOF WOULD RULE ADVERSELY AGAINST IT, AS THE TC RULINGS WERE, IN FACT, FAVORABLE TO IT AND

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IT WAS THE SRA WHICH APPEALED THESE RULINGS TO THE DOF.

On December 18, 2007, without necessarily giving due course to the Petition For Review, We ordered respondent to file a comment, not a Motion to Dismiss, within 10 days from notice, afterwhich the petition shall be deemed submitted for decision, unless the Court *En Banc* decides to require the parties to submit their simultaneous memoranda.

On January 23, 2008, upon motion, We granted respondents a non-extendible period of 30 days from January 24, 2008 or until February 23, 2008 within which to file their comment.

On February 29, 2008, respondents Commissioner of Customs and Sugar Regulatory Administration filed their Comment.

On March 19, 2008, petitioner filed a "Motion For Leave and To Admit Attached Reply (To Respondents' Comment dated February 26, 2008)".

On April 9, 2008, in the interest of substantial justice, We granted petitioner's "Motion For Leave and To Admit Attached Reply (to Respondent's Comment dated February 26, 2008) and admitted petitioner's Reply, and the case was deemed submitted for decision.

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Principal Issue

The foregoing issues boil down to the principal issue of whether or not petitioner is guilty of forum shopping.

Petitioner's Arguments

Petitioner argues that the DOF appeal was not *litis pendentia vis-à-vis* the First Division Petition since the Tariff Commission (TC) Ruling or the Department of Finance (DOF) Ruling cannot be *res judicata* as to the First Division Petition. The proceedings at the DOF were not quasi judicial in nature, and would not otherwise bind all the parties, especially Kraft. Petitioner further argues that there simply can be no *litis pendentia* between the First Division Petition and the Court of Appeals Petition. While both proceedings involve the same parties and importations by Kraft of Tang and Kool Aid, the subject matter involved in the two proceedings are different. The subject matter of the Court of Appeals Petition are the clearance requirements and the charging of sugar liens for Kraft's importations of Tang and Kool Aid under the Sugar Orders issued by the SRA. On the other hand, the subject matter of the First Division Petition is the Bureau of Customs' Resolution, which classified Kraft's

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Tang/Kool Aid Importations as being subject to a tariff duty of 48%, because of the amendments of the TCC under *EO 295*. Petitioner asserts that the issues involved, rights asserted and reliefs sought between the two proceedings are different, such that it cannot be said that the Court of Appeals Petition will render moot the First Division Petition.

Respondents' Counter-Arguments

On the other hand, respondents counter-argue that petitioner Kraft committed forum shopping when it filed the instant petition before this Court during the pendency of the DOF appeal. In the DOF appeal, as well as in the First Division Petition, the central issue is the proper tariff classification of the same Tang and Kool Aid products imported last May 10 and 24, 2004. Likewise, there is identity of the three preceding particulars such that any judgment rendered in one action, will, regardless of which party is successful, amount to *res judicata* in the other action.

Respondents further argue that the petitioner committed forum shopping when it filed a petition for prohibition before the Court of Appeals during the pendency of the instant petition. In filing a petition for prohibition before the Court of Appeals (CA Petition), petitioner again engaged in forum shopping.

THE RULING OF THE COURT

After a careful review of the evidence on record, as well as the applicable laws and jurisprudence, We find that petitioner Kraft committed forum shopping when it filed the Petition For Review with the First Division of this Court on August 8, 2005 (C.T.A. Case No. 7306) raising the issue on the proper tariff classification of Tang/Kool Aid Products – whether under Asean Harmonized Tariff Nomenclature Code 1701.99.19 (subject to 48% duty) or under Asean Harmonized Tariff Nomenclature Code 2106.90.52 (subject to 3% duty), without informing the First Division of the pending appeal filed by the Sugar Regulatory Administration with the Department of Finance assailing the ruling of the Tariff Commission dated June 29, 2004 that the proper classification for Tang/Kool Aid is Asean Harmonized Tariff Nomenclature (AH + N) heading 2106.90.52 with a Most Favored Nation (MFN) rate of 10% *ad valorem* and a Common Effective Preferential Tariff (CEPT) rate of 3% *ad valorem*. This is the very same issue raised in C.T.A Case No. 7306.

In the assailed Resolution dated June 14, 2007, the First Division found petitioner guilty of 2 forum shopping on two grounds, to wit:

> "1) when petitioner filed cases both before this Court and an administrative agency; and
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> 2) when it filed a petition for prohibition before the Court of Appeals despite the pendency of a petition for review before this Court."

As regards the first ground, a perusal of the Petition For Review filed by petitioner Kraft with the First Division (C.T.A. Case No. 7306) shows that it was accompanied by the requisite Verification and Certification of Non-Forum Shopping, in which petitioner Kraft made the following representation:

> "xxx xxx.
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> 4. I certify that (i) no other action or proceeding, or claim involving the same issues has been heretofore filed or commenced by the Corporation in the Supreme Court, the Court of Appeals, the Regional Trial Court or any other court, tribunal, agency, or quasi-judicial agency; (ii) to the best of my and the Corporation's knowledge, no such action or proceeding or claim is pending in the Supreme Court, the Court of Appeals, the Regional Trial Court or any other court, tribunal or agency; and (iii) if the Corporation or I should thereafter learn that a similar action or proceeding, or claim has been filed or is pending before the Supreme Court, the Court of Appeals, the Regional Trial Court or any other tribunal agency, or quasi-judicial agency, the Corporation

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and I undertake to promptly inform and report that fact to this Honorable Court within five (5) days therefrom.

xxx xxx."

Records show, however, that on July 30, 2004, the Sugar Regulatory Administration appealed to the Department of Finance the ruling of the Tariff Commission that the proper classification of petitioner's Tang/Kool Aid is Asean Harmonized Tariff Nomenclature heading 2106.90-52 with a Most Favored Nation (MFN) rate of 10% *ad valorem* and a Common Effective Preferential Tariff (CEPT) rate of 3% *ad valorem*.

This appeal pending before the Department of Finance should have been disclosed by petitioner Kraft in its Certification of Non-Forum Shopping when it filed the Petition For Review with the First Division (C.T.A. Case no. 7306) on August 8, 2005 raising the same issue on the proper tariff classification of petitioner Kraft's Tang/Kool Aid products – whether under Asean Harmonized Tariff Nomenclature (AH+N) 1701.99.19 (subject to 48% duty) or under Asean Harmonized Tariff Nomenclature Code (AH+N) 2106.90.52 with a CEPT duty of 3%.

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In this regard, *Section 5, Rule 7 of the 1997 Rules of Civil Procedure, as amended,* provides:

> "**SEC. 5**. *Certification against forum shopping*. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
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> xxx xxx."

The law is very clear. The plaintiff as principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: "xxx; b) if there is such pending action or claim, a complete statement of the present status thereof."

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will

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amount to *res judicata* in another, i.e., whether in two or more cases pending, there is identity of parties, rights or causes of action and reliefs sought (*Young vs. Keng Seng, 398 SCRA 629*).

In the case at bench, there is identity of transactions, facts and issues in the appeal before the Department of Finance and the Petition For Review filed with the First Division of this Court (*C.T.A. Case No. 7306*). The appeal before the Department of Finance assails the ruling of the Tariff Commission that the proper classification for petitioner Kraft's Tang/Kool Aid is AH+N Code 2106.90-52 with a 3% Common Effective Preferential Tariff (CEPT) rate duty. The Petition For Review filed by petitioner Kraft with the First Division of this Court (C.T.A. Case No. 7306) appealed to this Court the Resolution dated July 6, 2005 of the Commissioner of Customs, as Valuation Classification Appeals Board, reversing the Valuation and Classification Review Committee Resolution and classifying Kraft's Tang and Kool Aid importations under Asean Harmonized Tariff Nomenclature Code 1701.99.19 with a 48% CEPT rate of duty. On the other hand, C.T.A. Case No. 7306 raises the same issue being raised in the appeal pending before the Department of

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Finance involving the issue of the proper tariff classification of petitioner Kraft's Tang/Kool Aid Products - whether under Asean Harmonized Tariff Nomenclature 1701.99.19 (subject to 48% duty) or under Asean Harmonized Tariff Nomenclature 2106.90.52 (subject to 3% duty). The causes of action are clearly the same. There is identity of causes of action if the same evidence will sustain the second action. Basically, the same set of evidence will have to be presented to support the causes of action on the DOF appeal and in C.T.A. Case No. 7306. Thus, a finding in one will sustain a finding in the other. Moreover, the aforesaid cases are intimately related and/or intertwined with one another such that the judgment that may be rendered in one, regardless of which party would be successful, would amount to *res judicata* in the other (*City of Caloocan vs. Court of Appeals, 489 SCRA 57*).

It is, therefore, clear that petitioner's statement in its Certification against Forum Shopping in C.T.A. Case No. 7306 that there is no other proceeding involving the same issue was, in fact, false.

As to the second ground, petitioner does not have anything to disclose when it filed its Petition for Review (C.T.A. Case No. 7306)

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before this Court in Division on August 8, 2005, however, when it filed its Petition for Prohibition on June 28, 2006 with the Court of Appeals, petitioner has a bounden duty to disclose this fact with the First Division since under *Section 5, Rule 7 of the 1997 Rules of Civil Procedure, as amended,* a complaint may be dismissed for failure of the plaintiff therein to inform the court of the filing of the same or similar complaint within five (5) days from such filing. In this case, record shows that on July 3, 2006, petitioner filed a "Manifestation" with this Court stating that on June 28, 2006, it filed a Petition For Prohibition with the Court of Appeals, docketed as CA-G.R. SP No. 95027; hence, technically, petitioner did not violate the rule mandating that the plaintiff should inform the Court of any same or similar complaint filed.

Nevertheless, petitioner's filing of a Petition for Prohibition in the Court of Appeals during the pendency of C.T.A. Case No. 7306 before this Court in Division involving identical parties, issues and reliefs prayed for, clearly constitutes forum shopping. The same or similar complaint referred to in the rule refers to a complaint wherein the parties, causes of action, issues and reliefs prayed for, are identical to those in the

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first complaint. In *Ayala Land, Inc. v. Valisno (324 SCRA 522)* the Supreme Court explained the concept of forum shopping, to wit –

> "Forum Shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another (*Alejandrino v. Court of Appeals*, 295 SCRA 536, 554 [1998]; *Philippine Woman's Christian Temperance Union, Inc. v. Abiertas House of Friendship, Inc.*, 292 SCRA 785, 794 [1998]). *Litis pendentia* requires the concurrence of the following requisites:
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> 1. Identity of parties, or at least such parties as those representing the same interests in both actions;
>
> 2. Identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and
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> 3. Identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res adjudicata* in the other case."

Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action. It is an act of

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malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action *(Toprate Construction vs. Paxton Devt., 410 SCRA 604).*

The similarity of both cases filed before the First Division and the Court of Appeals was clearly explained in the assailed Resolution of the First Division dated June 14, 2007. Therefore, petitioner's act of filing a Petition For Prohibition with the Court of Appeals, while C.T.A. Case No. 7306 is pending with the First Division of this Court is a blatant violation of forum shopping which warrants the dismissal of the action.

Finding no reversible error, the Court *En Banc*, therefore, affirms the dismissal of C.T.A. Case No. 7306.

WHEREFORE, premises considered, the present Petition For Review is hereby **DISMISSED**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice