REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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KRAFT FOODS (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS,
Respondent,

- and -

SUGAR REGULATORY ADMINISTRATION,
Intervenor.

C.T.A. CASE NO. 7306

Members:

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

Promulgated:

JUN 14 2007; 1:00 pm

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RESOLUTION

CASANOVA, J.:

For resolution are the following:

1. Respondent and Intervenor's **"Motion to Cite Petitioner for Forum Shopping"** filed on December 28, 2006;

2. Petitioner's **"Opposition (To Motion to Cite Petitioner for Forum Shopping dated December 28, 2006)"** filed on January 12, 2007;

3. Respondent and Intervenor's **"Reply"** filed on February 13, 2007; and

4. Petitioner's **"Rejoinder [To Respondent's and Intervenor's Reply (to Opposition to Motion to Cite Petitioner for Forum Shopping) dated February 13, 2007]"** filed on March 2, 2007.

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Respondent and Intervenor submit that petitioner has committed two instances of forum shopping.

Firstly, petitioner violated its certification under oath of non-forum shopping by not informing this Court that the very same issue in this petition is pending before the Department of Finance (DOF). It is their contention that under Section 2 of Rule 42 of the 1997 Rules of Civil Procedure, a certificate against forum shopping must be attached to the petition thereby certifying that no such action or proceeding involving the same issues has been commenced before the Supreme Court, the Court of Appeals or the different divisions thereof, or in any other tribunal or agency. In contravention of the aforementioned section, petitioner failed to mention in its Verification and Certification on Non-Forum Shopping that there is a pending appeal before the Secretary of the DOF concerning the Tariff Commission Rulings dated June 20, 2004 involving the same issues.

Second, petitioner filed a Petition for Prohibition before the Court of Appeals assailing the validity of the Sugar Regulatory Administration's (SRA) Sugar Orders after the latter agency has been granted the right to intervene in this case by this Honorable Court.

On the other hand, petitioner, in its "Opposition" objects to this instant Motion on the following grounds, to quote:

> 1. Vis-à-vis the present petition before this Honorable Court, the SRA's appeal of the Tariff Commission ("TC") rulings (the "TC Rulings") to the Department of Finance ("DOF") did not result in *litis pendentia*, and neither will it constitute *res judicata*, which are the essential elements of forum shopping. In these circumstances, our Supreme Court has held that the SRA's appeal to the DOF need not be mentioned in the certification against forum shopping.
>
> 2. In the petition, which Kraft filed with this Honorable Court, it is in fact disclosed that there were rulings of the TC and that the SRA appealed such rulings to the DOF.
>
> 3. Kraft did not file this appeal to vex any person, but only to preserve and protect its rights, and no vexation resulted or will result from this appeal. This appeal before the Honorable Court of Tax Appeals is the proper – and only – remedy to appeal the Commissioner's July 6, 2005 Resolution.

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4. It is very clear that Kraft did not engage in forum shopping when it filed its petition for prohibition (the "CA Petition") with the Court of Appeals. This appeal and the CA petition simply involve completely different issues and subject matters.

In their Reply, respondent and intervenor counter that:

1. The essential elements of *litis pendentia* and *res judicata*, particularly the sameness of issue, amounting to forum shopping exist in this case;

2. The case of *Roxas vs. Court of Appeals* cited by petitioner to justify its non-disclosure of the pending appeal involving the same issue before the Secretary of the Department of Finance in its certification against forum shopping does not apply in this case;

3. No proper disclosure was ever made by petitioner of the pending appeal of the Tariff Commission Rulings before the Secretary of the Department of Finance in this case;

4. Petitioner's failure to disclose the pending appeal before the Secretary of the Department of Finance in its certification against forum shopping before this Honorable Court is misleading and vexatious; and

5. Petitioner also committed forum shopping in filing the petition for prohibition before the Court of Appeals involving the Sugar Regulatory Administration's legal interest as intervenor in this case.

After a meticulous analysis of the arguments presented by the parties, this Court resolves to grant this instant motion.

The rule against forum shopping requires disclosure of any other action involving the same issues in the Supreme Court, the Court of Appeals or the different divisions thereof, or any other tribunal or agency. Failure to disclose such fact in the said certification is a clear violation of the rules which may warrant the dismissal of the case. Section 5 of Rule 7 of the Revised Rules of Court states that "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

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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."

In the case of **Villanueva vs. Adre**[1], it was held that there is forum shopping "whenever, as a result of an adverse opinion on one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another. The principle applies not only with respect to suits filed in the courts but also in connection with litigations commenced in the courts while an administrative proceeding is pending, as in this case, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling." In this instant case, petitioner does not even dispute that there is indeed a pending appeal before the Secretary of Finance, for which, the issue involved is identical to the issue raised in this instant petition.

The Supreme Court in the case of **City of Cebu vs. Del Rosario**[2] explained that:

> "What is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts or administrative agencies to rule on the **same or related causes** or grant **the same or substantially the same reliefs**, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues."
> (*Emphasis supplied*)

From the foregoing, it appears that there may also be forum shopping when the petitioner filed a case in the Court of Appeals. If the Court of Appeals nullifies the Sugar Orders, it will in effect render moot the proceedings before this Court. The resolution of the Sugar Regulatory Board reclassifying petitioner's imported products from AHTN Code No. 2106.90-52 to AHTN 1701.99-19 that increased the products' tariff rate from 3% to 48%, which is the subject of the case before Us, will necessarily be reversed. Both courts are

[1] 172 SCRA 876
[2] G.R.No. 169341, November 22, 2006

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asked to resolve practically the same or related issues and/or grant the same or substantially the same reliefs, which is the issue of reclassification and the relief of nullifying the reclassification made on petitioner's imported products. Aside from this, there is also the possibility of the two fora arriving at different or conflicting decisions, which is the very situation the prohibition against forum-shopping wishes to avoid.

Accordingly, petitioner is guilty of two accounts of forum-shopping, namely: (1) when petitioner filed cases both before this Court and an administrative agency; and (2) when it filed a Petition for Prohibition before the Court of Appeals despite the pendency of a Petition for Review before this Court.

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.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(On Sick Leave)
LOVELL R. BAUTISTA
Associate Justice

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