REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

COSMOS BOTTLING CORPORATION, Petitioner,	**CTA CASE NO. 9405**
- versus -	Members: **DEL ROSARIO**, *P.J., Chairperson,* **FABON-VICTORINO,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 07 2019 10:10am

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RESOLUTION

For this Court's consideration is petitioner's **Compliance** filed on December 6, 2018 with respondent's **Manifestation** filed on January 23, 2019.

In the Order dated November 27, 2018, the Court noted that the Certification on Non-Forum Shopping attached to the original Petition for Review does not include any statement with respect to the purported letter filed with respondent, seeking an affirmative relief therefrom. The Court required petitioner's counsel, Atty. Emerson S. Panganiban, to show cause as to why the case should not be dismissed outright for violation of the rule on forum shopping until December 7, 2018, furnishing a copy thereof by personal service to Atty. Velasco, who in turn was given a period of five (5) days from receipt thereof, within which to file his comment or objection thereto.

Per Records Verification dated January 7, 2019, respondent failed to file his comment on petitioner's **Compliance**. On January 23, 2018, respondent, however, filed a Manifestation apologizing for his failure to file a comment within the period he himself requested and granted by the Court.

In the Compliance, petitioner avers that it did not violate the rule on non-forum shopping for the following reasons:

1.) Petitioner's Letter dated July 11, 2016 is not a motion for reconsideration or an action or claim pending before any court, tribunal or quasi-judicial agency;

2.) Respondent, with respect to aforesaid letter, is not a "forum" within the contemplation of the rules on forum shopping because respondent is not any other court or quasi-judicial agency with whom petitioner is seeking resolution of the assessment;

3.) Petitioner was acting in good faith all throughout the proceedings inclusive of the period prior to the filing of the Petition for Review; and

4.) Assuming, but without admitting that respondent is a forum, still the elements of forum shopping are not present in the case.

Petitioner narrates that on October 2, 2015, it requested former Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares to reconsider the Final Decision on Disputed Assessment (FDDA) dated September 1, 2015 issued by Assistant Commissioner Nestor S. Valeroso. Said Request for Reconsideration was unacted upon for several months but when former CIR Jacinto-Henares was about to leave her office on July 1, 2016, she issued a half-page denial of the request without stating the facts or legal basis for its denial. Surprised with the half-page denial, petitioner wrote the Letter dated July 11, 2016 to CIR Caesar R. Dulay to take a second look at the situation and offered to pay the amount of deficiency tax for which petitioner honestly considered itself to be liable in order to concentrate itself on its daily business operations. As the period for filing an appeal with the Court was about to expire on July 31, 2016, and there was no response from respondent, petitioner filed the Petition for Review on July 29, 2016 in order to prevent the assessment from becoming final and executory.

Petitioner explains that in filing the Letter dated July 11, 2016, its intention was to try to resolve the matter without litigation; thus, it offered payment of deficiency taxes which it felt it is reasonably liable. In petitioner's honest judgment, its request to take a second look and offer to pay is neither an action nor a claim which should be disclosed as required in Section 5, Rule 7 of the Rules of Court as it is a mere informal request with offer to pay which the CIR can easily choose to ignore, unlike a motion for reconsideration and administrative actions or claims.

Nonetheless, petitioner manifests that the existence of the subject Letter was disclosed and made an integral part as Annex "A" of petitioner's Reply (Re: Respondent's Comment dated July 12, 2017) dated July 31, 2017.

In the Manifestation, respondent alleges that there is necessity to point out that further explanation should be required from petitioner "to reconcile the innocuous 'informal request' characterized in its Compliance and the stronger 'appeal' dated 21 July 2016 marked as Exhibit P-17. The latter even powerfully branded in essence as a 'request for reconsideration' or 'request for revocation'. This document was identified in the Supplemental Petition for Review included in the Pre-Trial Order, identified by two witnesses, but in the end, not include in the formal offer."

There is forum shopping when a party seeks a favorable opinion in another forum, other than by an appeal or by certiorari, as a result of an adverse opinion in one forum, or when he institutes two or more actions or proceedings grounded on the same cause, hoping that one or the other court would make a favorable disposition on his case. [1]

To end such practice, a certification against forum shopping is required by Section 5, Rule 7 of the Rules of Court which states:

> "**Section 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.

[1] *Commissioner of Customs vs. Pilipinas Shell Petroleum Corporation,* G.R. No. 205002, April 20, 2016.

> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions." (Boldfacing supplied)

In order to be held liable under the afore-quoted rule, there should be, either a **failure to include the certification in one's initiatory pleading, or a misrepresentation as to the pendency of another case involving the same issues, parties, and causes of actions with the second complaint.** [2]

The purpose of the rule is to avoid multiplicity of suits and to prevent a party from instituting two or more actions or proceeding involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition. [3]

What is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.[4]

To determine whether a party violated the rule against forum shopping, it is crucial to ask whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another.[5] Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being

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[2] *Surendra Gobindram Daswani vs. Banco de Oro Universal Bank and Register of Deeds Makati City*, G.R. No. 190983, July 29, 2015.
[3] *Fontana Development Corp., et al vs. Sascha Vukasinovic*, G.R. No. 222424, September 21, 2016.
[4] *Philip S. Yu vs. Hernan G. Lim*, G.R. No. 182291, September 22, 2010.
[5] *Ignacio vs. Office of the City Treasurer of Quezon City*, G.R. No. 221620, September 11, 2017.

founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.[6]

In the case at bar, in the **July 11, 2016 Letter**, petitioner requested respondent, CIR Caesar R. Dulay, to take a second look on the said **FDDA dated September 1, 2015 and the Letter (Final Decision) dated June 29, 2016 of then CIR Kim S. Jacinto-Henares**. Similarly, in the original **Petition for Review[7] filed on July 29, 2016** before the Court, petitioner sought the nullification and cancellation of the **FDDA dated September 1, 2015 and the Letter (Final Decision) dated June 29, 2016 of then CIR Kim S. Jacinto-Henares.**

More importantly, the Court notes that in the **Letter dated July 21, 2016** addressed to respondent, petitioner specifically prayed for respondent to "re-examine and take a hard look at [its] case and grant [its] request for the suspension or revocation of [respondent] predecessor's midnight denial of its request for reconsideration."

From the foregoing, there can be no denying that while the July 11, 2016 and July 21, 2016 Letters and the instant Petition involve the same party against whom the assessment was issued, the rights asserted and reliefs prayed for (*i.e.,* nullification and reversal of the FDDA dated September 1, 2015 and the Letter (Final Decision) are founded on the same facts.

Considering petitioner's action in instituting the Petition for Review and Supplemental Petition for Review with this Court, when at the same time, it has a pending request with the BIR to reconsider the assessment issued against it, - - and worse, without disclosing the pendency of the July 11, 2016 and July 21, 2016 Letters in its Certification of Non-Forum Shopping, the Court finds petitioner guilty of forum shopping.

As to the liability of petitioner for the commission of forum shopping, Section 5, Rule 7 of the Rules of Court states:

> "SEC. 5. x x x If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be

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[6] *Lanao Del Norte Electric Cooperative, Inc. vs. Provincial Government of Lanao del Norte*, G. R. No. 185420, August 29, 2017.
[7] Dated July 27, 2017.

ground for summary dismissal with prejudice and shall constitute **direct contempt**, as well as a cause for administrative sanctions." (Boldfacing supplied)

Under Rule 71, Section 1 of the Rules of Court, direct contempt committed against a Regional Trial Court or a court of equivalent or higher rank is punishable by imprisonment not exceeding ten (10) days and/or a fine not exceeding ₱2,000.00.

WHEREFORE, premises considered, the Petition for Review and Supplemental Petition for Review are hereby **DISMISSED**. Petitioner is hereby declared to have engaged in forum shopping and is adjudged **GUILTY OF DIRECT CONTEMPT**; petitioner is hereby **ORDERED** to pay a **FINE** of Two Thousand Pesos (Php2,000.00), within five (5) days from notice.

Respondent's Manifestation filed on January 23, 2019 is **NOTED.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice