REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FREBEL ENTERPRISES, represented by: RUFINO Q. MARMOLEJO JR.,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

CTA CASE NO. 9097

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JUL 21 2016 ; 9:42 a.m.

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RESOLUTION

UY, J.:

This resolves the following:

1. Respondent's **Very Urgent Omnibus Motion**, filed on March 30, 2016, without petitioner's comment, despite due notice, as per Records Verification dated May 5, 2016; and

2. Petitioner's **Very Urgent Motion/Manifestation to Withdraw Petition**, filed on May 6, 2016, with respondent's **Comment (On Petitioner's Very Urgent Motion/Manifestation to Withdraw Petition dated May 6, 2016)**, filed on June 1, 2016.

In respondent's **Very Urgent Omnibus Motion**, it is prayed as follows:

1. that the Court's Order dated March 16, 2016 be reconsidered;
2. that respondent's Manifestation dated March 22, 2016 be noted;
3. that the hearing set on May 19, 2016 for respondent's affirmative defenses be cancelled;

4. that the pre-trial conference on April 7, 2016 and of the submission of the parties' respective pre-trial briefs and judicial affidavits be cancelled and suspended; and
5. that respondent's affirmative defenses be resolved.

Records show that in the Order dated March 16, 2016, the Court scheduled the pre-trial conference on April 7, 2016; directed the parties to file their respective pre-trial briefs at least five (5) days before the scheduled pre-trial conference; and set the hearing for respondent's affirmative defenses on May 19, 2016.

Nevertheless, in respondent's Manifestation filed on March 22, 2016, it is stated that respondent is dispensing with the presentation of witness because the said affirmative defenses raised for the dismissal of the petition are purely legal matters.

Said Manifestation is hereby **NOTED.**

Subsequently, in the Resolution dated April 6, 2016, the pre-trial conference set on April 7, 2016 and the hearing on respondent's affirmative defenses set on May 19, 2016 were cancelled. In effect, respondent's prayer for reconsideration of the March 16, 2016 Order had been effectively resolved.

As regards the affirmative defenses raised in the Answer filed on October 15, 2015, respondent contends that the Court has no jurisdiction over the case, considering that the letter dated May 15, 2015 signed by the Commissioner of Customs is not yet a "decision" contemplated by law which may be the subject of an appeal before the Court; that the instant petition was belatedly filed; and that the instant petition does not contain the roll of attorney's number of petitioner's counsel, thus, non-compliant with the mandatory form and style of a petition for review as required by the Revised Rules of the Court of Tax Appeals (RRCTA), as amended *vis-à-vis* the Rules of Court, as amended.

On the other hand, in its **Very Urgent Motion/ Manifestation to Withdraw Petition** dated May 6, 2016, petitioner alleges that, after conducting a re-evaluation, the letter dated May 15, 2015 signed by the Commissioner of the Bureau of Customs and received by him on June 4, 2015, is not as yet a Decision contemplated under the law. Thus, the filing of the instant petition was still premature; that the exhaustion of administrative remedies must be complied with; and that the issues involved in the instant petition are within the competence of the Bureau of Customs to resolve.

Taking into consideration the foregoing contentions and arguments of both parties in their respective pleadings and motions, it is readily apparent that both are in agreement that the letter dated May 15, 2015 signed by the Commissioner of Customs is not yet a "decision" contemplated by law which may be the subject of an appeal before the Court.

Hence, the Court, in the exercise of its judicial discretion, finds sufficient ground to grant petitioner's motion to withdraw the instant Petition for Review, pursuant to Section 3, Rule 50 of the 1997 Rules of Civil Procedure[1], applied suppletorily to the Revised Rules of the Court of Tax Appeals, as amended[2], if only to enable the petitioner to exhaust any available administrative remedy before its resort to court action.

Correspondingly, resolution of respondent's affirmative defenses become unnecessary.

WHEREFORE, in light of the foregoing considerations, petitioner's Very Urgent Motion/Manifestation To Withdraw Petition is **NOTED** and **GRANTED**. The instant Petition for Review is deemed **WITHDRAWN.** This case is considered **CLOSED AND TERMINATED.**

Respondent's **Very Urgent Omnibus Motion** is **NOTED** for being moot.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[1] Sec. 3 of Rule 50 of the 1997 Rules of Civil Procedure on Dismissal of Appeal provides: " **Sec. 3.** ***Withdrawal of Appeal.*** – An appeal may be withdrawn as of right at anytime before the filing of the appellee's brief. Thereafter, **the withdrawal may be allowed in the discretion of the court** (emphasis supplied) cited in "***Diageo Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB 902, June 26, 2013.***"

[2] Section 3 of Rule 1 of the Revised Rules of the Court of Tax Appeals, as amended, provides: "**Sec. 3** ***Applicability of the Rules of Court.*** – The Rules of Court in the Philippines shall apply suppletorily to these Rules."