REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CEMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5125

LIWAYWAY VINZONS-CHATO,
in her capacity as the
COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
NOV 09 1995

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RESOLUTION

Respondent filed a Motion to Dismiss on August 1, 1995 based on the following reasons:

1) the main cause of action in the petition has become moot and academic; and

2) the Honorable Court loses its jurisdiction over the above-entitled case due to the lifting of the warrant of distraint and/or levy.

At this point, it is appropriate to give a brief historical background of the case to clarify the issues involved.

On September 7, 1993, petitioner received assessment notices for alleged deficiency business tax and income tax for the taxable year 1987. Subsequently, petitioner filed a letter of protest with respondent on October 7,

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1993. Respondent did not act on the protest but instead issued a letter advising petitioner to settle the assessed amounts through compromise. Thereafter, on June 21, 1994, petitioner received a Warrant of Distraint and/or Levy from respondent prompting said petitioner to elevate its cause to this Court through a Petition with Prayer for Issuance of Writ of Injunction filed on June 29, 1994. Apparently, petitioner construed the issuance of a Warrant of Distraint and/or Levy as equivalent to a decision of respondent on the protest, hence appealable to this Court.

During the pendency of the trial, a letter dated December 12, 1994, was issued by Regional Director, Antonio I. Ortega, informing the petitioner that the Warrant of Distraint and/or Levy has been cancelled and withdrawn and that the protest filed earlier will finally be resolved.

This supervening event prompted respondent to file a Motion to Dismiss primarily on the ground of lack of jurisdiction because it is her contention that the cancellation of the Warrant of Distraint and/or Levy had the effect of divesting this Court of its jurisdiction as there can be no more action that can be interpreted as a decision on petitioner's protest. To bolster its claim, respondent cited the decision of the Supreme Court in the

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case entitled **Commissioner of Internal Revenue vs. Villa,** 22 SCRA 3, where it was ruled that a mere assessment from the BIR is not appealable to the Court of Tax Appeals.

A careful consideration of the facts surrounding the case as well as the issues involved leads this Court to uphold respondent's contention. This Court acquired jurisdiction primarily upon the issuance of a Warrant of Distraint and/or Levy which is considered to be a decision on the protest filed by the petitioner hence appealable to this Court. The rationale for considering the warrant as a final decision is that the act of issuing such warrant is tantamount to a denial on the part of the respondent on petitioner's request for reconsideration embodied in a protest by enforcing collection of taxes by one of the means provided by law. It follows therefor, that if the respondent who issued such warrant later on cancels and withdraws the same then the protest earlier filed by petitioner remains unresolved. In fact, respondent formally entertains the protest showing lack of finality of the case in the administrative level. This Court in such a situation has no other choice but to dismiss this case because there is no decision of the respondent calling for review hence divesting us of jurisdiction to dispose this case on its merits.

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WHEREFORE, in view of the foregoing, this case is hereby **DISMISSED** without prejudice to the petitioner seeking recourse to this Court in the event that its protest is eventually denied in whole or in part.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge

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