REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SMCC PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE No. 832
(CTA Case No. 8046)

Members:
ACOSTA, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
OCT 13 2011 3:20 pm

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RESOLUTION

For resolution before this Court is the Urgent Omnibus Motion (Motion for Clarification with Alternative Motion to Withdraw the Case)[1] filed by petitioner on October 4, 2011, seeking clarification on the matter of withdrawing the present petition and filing a new petition for review in light of the issuance of respondent's denial of its administrative claim for refund of unutilized input VAT for the taxable year 2008.

Petitioner filed its administrative claim with respondent on March 5, 2010. Due to respondent's inaction on its administrative claim, petitioner, on March 29, 2010, filed its judicial claim for refund of unutilized input VAT via

[1] Docket. pp. 100-105.

Petition for Review[2] before the CTA Third Division, docketed as CTA Case No. 8046. Acting on the Motion to Dismiss for Lack of Jurisdiction filed by respondent, the CTA Third Division issued a Resolution[3] on May 17, 2011 dismissing the case for lack of cause of action, to wit:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DISMISSED** for having been prematurely filed."

Petitioner filed its Motion for Reconsideration[4] on June 6, 2011, which was denied by the CTA Third Division for lack of merit in a Resolution[5] dated August 18, 2011.

Hence, petitioner filed the present Petition for Review[6] on September 7, 2011.

While the case was pending before this Court, petitioner received, on September 20, 2011, respondent's decision denying the former's administrative claim for refund of unutilized input VAT for the taxable year 2008.

Petitioner filed the instant Motion to seek clarification and guidance from this Court as to whether or not it should withdraw the instant petition and file a new Petition for Review at the CTA Division level pursuant to the provisions of Rule 4, Section 3(a)(1) of the Revised Rules of the Court of Tax Appeals (RRCTA)[7] in light of the decision issued by respondent on its administrative claim.

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[2] *Id.*, pp. 46-66.
[3] *Id.*, pp. 25-32.
[4] *Id.*, pp. 67-78.
[5] *Id.*, pp. 37-39.
[6] *Id.*, pp. 1-24.
[7]
RULE 4
JURISDICTION OF THE COURT
xxx xxx xxx
Sec. 3. *Cases within the jurisdiction of the Court in Divisions.-*
The Court in Divisions shall exercise:
a. Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in

In its Motion, petitioner submitted that under Section 112(C)[8] of the 1997 NIRC, as amended, it has thirty (30) days from the receipt of the decision denying its claim or until October 20, 2011, to file a Petition for Review with the CTA.

We find merit in petitioner's position that it has thirty (30) days from the receipt of respondent's denial of its administrative claim to file for its judicial claim before the CTA in Division. Section 112(C) of the 1997 NIRC, as amended, clearly provides that "**within thirty (30) days from the receipt of the decision denying the claim** or after the expiration of the one hundred twenty day-period, **appeal the decision** or the unacted claim **with the Court of Tax Appeals.**"[9] (*Emphasis ours)*

This Court further notes that the dismissal of petitioner's judicial claim for refund in CTA Case No. 8046 was based on a technical ground and not on the merits of the case. The Petition for Review was dismissed on the basis that it was prematurely filed, thus petitioner has no cause of action to litigate its claim. It was a dismissal without prejudice. Consequently, petitioner is not barred from filing a new Petition for Review.

On petitioner's request for clarification as to whether it will be required to pay another filing fee should it file a new petition in relation to the present claim, this Court rules in the affirmative. Filing a new Petition for Review

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relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by Bureau of Internal Revenue.

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[8] SEC. 112. Refunds or Tax Credits of Input Tax. –

xxx xxx xxx

(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. –

xxx xxx xxx

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

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[9] 1997 NIRC, as amended, Section 112 (C).

before the CTA in Division will require the payment of corresponding docket fees pursuant to Rule 6, Section 3 of the RRCTA[10].

Lastly, on the matter of withdrawing the present petition in light of the matters discussed above, this Court rules that should petitioner decide to file a new petition for review to litigate his present judicial claim for refund, the instant petition should be properly withdrawn, otherwise petitioner will be held liable for forum shopping. The Supreme Court defined forum shopping as:

> "**Forum shopping** is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for certiorari. It may also be **the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.** The established rule is that for forum shopping to exist, both actions must involve the same transactions, same essential facts and circumstances and must raise identical causes of actions, subject matter, and issues. Forum shopping unnecessarily burdens our courts with heavy caseloads, unduly taxes the manpower and financial resources of the judiciary and trifles with and mocks our judicial processes, thereby adversely affecting the efficient administration of justice. Forum shopping is contumacious, as well as an act of malpractice that is proscribed and condemned as trifling with the courts and abusive of their processes. A violation of the rule against forum shopping warrants prosecution for contempt of court and constitutes a ground for summary dismissal of the actions involved, without prejudice to appropriate administrative action against the counsel.

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10 RULE 6
PLEADINGS FILED WITH THE COURT
xxx xxx xxx
SEC.3. *Payment of Docket Fees.*- The Clerk of Court shall not receive a petition for review for filing unless the petitioner submits proof of payment of docket fees. Upon receipt of the petition or the complaint, it will be docketed and assigned a number, which shall be placed by the parties on all papers thereafter filed in the proceeding. The Clerk of Court will then issue the necessary summons to the respondent or the defendant. *(RCTA, Rule 5, sec. 3a)*
xxx xxx xxx

> Forum shopping exists where the elements of litis pendentia are present, and where a final judgment in one case will amount to res judicata in the other. The elements of forum shopping are: (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) 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."[11] (*Emphasis ours)*

Petitioner included in its present Motion an alternative Motion to Withdraw should this Court rule that such is necessary prior to filing a new petition for review before the CTA in Division. In view of the foregoing, this Court considers the present Motion as petitioner's Motion to Withdraw the present petition.

WHEREFORE, premises considered, the Petition for Review filed before the Court *En Banc* docketed as CTA EB No. 832, is deemed **WITHDRAWN**. Accordingly, this case is considered **CLOSED** and **TERMINATED.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

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[11] Sps. Isidro "Abel" Cruz and Lea Cruz vs. Sps. Florencio and Amparo Caraos, Natividad Caraos, Sps. Maximo and Luisa Bangonon, Sps. Federico and Susan Garcia, Sps. Enrique And Aurora Lopez, Sps. Benjamin and Violeta Pepito, Sps. Diopanes and Josefina Sucgang, Sps. Jelmer and Maryrish Sucgang, Teresita Murchante, Lita Jose, Brenda Mamaril And Roberto Su, G.R. No. 138208, April 23, 2007.

(I maintain my Dissenting Opinion as promulgated by the Court in the assailed Resolutions dated May 17, 2011 and August 18, 2011)

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUSTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On-Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice