REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GST PHILIPPINES INCORPORATED,
Petitioner,

C.T.A. EB No. 449
(C.T.A. Case No. 7133)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF CUSTOMS and SECRETARY OF FINANCE,
Respondents.

Promulgated: *[signature]*
JUN 15 2009 10:00 a.m.

x---x

DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed on January 8, 2009, assailing the Decision[2] dated July 17, 2008 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 7133, ordering petitioner to pay the respondent Commissioner of Customs ("COC") the amount of P1,042,875.00 and

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[1] *Rollo*, C.T.A. EB No. 449 (C.T.A. Case No. 7133), pp. 9 - 66 with Annexes.
[2] Penned by Associate Justice Juanito C. Castañeda, Jr., and concurred in by Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez.

P336,549.00, representing additional duties for the shipments covered by Entry Nos. C-26222-00 and C-8511-00, respectively, with legal interest of six percent (6%) *per annum* from the date of demand up to the finality of the Decision, plus twelve percent (12%) interest *per annum* from finality of the Decision until its full satisfaction; and the Resolution dated December 3, 2008, denying the "Motion for Reconsideration" of herein petitioner.

Antecedent Facts

The antecedent facts, as narrated by the Court in Division in its Decision, are as follows:

> "GST Philippines, Inc.[3] (Petitioner) is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at the 2nd Floor, ALPAP I Building, 140 L.P. Leviste Street, Salcedo Village, Makati City. It is primarily engaged in the business of manufacturing, processing, erecting, installing, selling, importing, exporting and dealing in all kinds, forms and combinations of iron, steel or other metals, such as, but not limited to, grinding balls, and rods, structural steel, forged steel, cast ferrous metals, mechanical appliances, instruments, any and all kinds of industrial machineries and equipment and any and all processes and products and any and all other analogous or related objects.
>
> The Commissioner of Customs[4] (Respondent) is the duly appointed official of the Bureau of Customs whose functions include, among others: (1) the assessment and collection of lawful revenues from imported articles and all other duties, fees, charges, fines, and penalties accruing under the tariff and customs laws; (2) the enforcement of the tariff and customs laws and all other laws, rules and regulations relating to the tariff and customs administration; and (3) the supervision and control of all import and export cargoes, landed or stored in piers, airports, terminal facilities, including container yards and freight stations, for the protection of government revenue.
>
> The Secretary of Finance[5] is the duly appointed official of the Department of Finance who exercises full supervision and control over the Bureau of Customs.

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[3] Herein Petitioner.
[4] Herein Respondent.
[5] Herein Respondent.

On December 12, 1999, a shipment covered by Clean Report of Findings (CRF) No. ITA 800288 R1, was exported from Italy bound for the Philippines and consigned in the name of petitioner (First Shipment). The First Shipment arrived at the Manila International Container Port (MICP) on January 20, 2000. Petitioner paid the duties and taxes based on the declared invoice value of US$450.00/MT for the First Shipment under Entry No. C8511-00. Upon payment of the duties and taxes, the First Shipment was released.

On March 13, 2000, another shipment covered by CRF No. ITA 035398, was exported from Italy bound for the Philippines, also consigned in the name of petitioner (Second Shipment). The Second Shipment arrived at the MICP on March 23, 2000. Petitioner paid the duties and taxes based on the declared invoice value of US$461.35/MT for the Second Shipment under Entry No. C26222-00. Upon payment of the duties and taxes, the Second Shipment was released.

On April 12, 2000, petitioner sent a letter to the Deputy Commissioner of the Bureau of Customs, also the Chairman of the Customs-*Société Générale de Surveillance* (SGS) Imports Valuation and Classification Committee (Committee) stating that reliance by the Customs Appraiser for the First Shipment on a similar importation covered by CRF No. ITA 028653 is erroneous.

On March 23, 2001, petitioner received two (2) demand letters from Buenaventura Maniego, District Collector of Customs, MICP (Collector), dated June 22, 2000 and July 24, 2000, advising it that the Committee has issued two (2) resolutions directing petitioner to pay additional duties and taxes in the amounts of P1,042,875.00 and P336,549.00 for the Second and First Shipments, respectively. In the Demand Letters, the Collector requested petitioner to settle the two amounts within ten (10) days from receipt of the letters; otherwise, the Bureau of Customs would be constrained to institute the necessary legal action to protect the interest of the government. The Collector also stated that should petitioner fail to pay within the ten-day period, petitioner's pending or incoming shipments would be put on hold until such time that its alleged obligation is settled, pursuant to Section 1508 of the Tariff and Customs Code of the Philippines (TCCP).

The Resolution of the Committee for the First Shipment provided in part:

> 'Respectfully referred to the District Collector, MICP Attn.: Chief, Cash Division for his information and guidance is the within copy of the duly approved disposition form of even date, which reflects the findings/resolution of the Customs-SGS Imports Valuation and Classification Committee at its meeting held on 16-17 May 2000, relative to the following case, to wit:
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> xxx xxx xxx

> RESOLUTION:
>
> To apply the previous decision of CRF No. ITA 028653 in absolute value.
>
> xxx xxx xxx
>
> Covering entry to be reliquidated. In the meantime, other shipments of importer to be put on hold until full payment of duties and taxes due, based on the foregoing resolution. xxx
>
> Recommending re-appraisal of said shipment from $450/mt to $1199.84/mt as per approved BOC-SGS Committee Resolution – to apply Revision Order No. 11-95 and 5-97 at $1,499.00/mt but less 20% as it represents a third country value but this time it is all the same description and country of origin."

On the other hand, the Resolution of the Committee for the Second Shipment provided in part:

> 'Respectfully referred to the District Collector, MICP. Attn.: Chief, Cash Division for his information and guidance is the within copy of the duly approved Disposition Form of even date, which reflects the findings/resolution of the Customs-SGS Imports Valuation and Classification Committee at its meeting held on 4-5 May 2000, relative to the following case, to wit:
>
> xxx xxx xxx
>
> RESOLUTION:
>
> To adopt the appraiser's recommended value at US$1,999.58/mt which was sourced from a previous Committee decision under CRF No. 028653.
>
> xxx xxx xxx
>
> Covering entry to be reliquidated. In the meantime, other shipments of importer to be put on hold until full payment of duties and taxes due, based on the foregoing resolution.'

On March 30, 2001, respondent Commissioner issued Customs Memorandum Order (CMO) No. 6-2001 which included petitioner in the list of importers whose current and future shipments cannot be released by the Bureau of Customs until their liability for unpaid duties and taxes on previous importations are settled (Hold Order).

On April 2, 2001, petitioner sent a letter to the Collector stating that the Customs Appraiser erred in the classification of the Shipments.

On May 9, 2001, respondent Commissioner sent a letter to petitioner informing the latter that:

> 'xxx the BOC-SGS Appeals Committee has lost its jurisdiction to rule on your request considering that the written resolution thereof has already been forwarded and received by the Collection Division before receipt of your said request. Pursuant to CMO 12-93, Appeals Committee decisions are deemed final and executory upon receipt by the Collection Division of the final resolution.
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> Said resolution adopted the appraiser's recommended value based on RO11-97/5-97 at US$1,999.58/MT and US$1,499/MT but less 20% allowance for being a third country, respectively, which was sourced from a previous Committee decision under CRF No. 028653, as well as the fact that the importer failed to submit any evidence to warrant a change of the questioned resolution.
>
> Considering the foregoing, you may avail of the protest remedy accorded to you under Section 2308 of the Tariff and Customs Code of the Philippines, as amended.'

By letter dated January 31, 2002, petitioner elevated the matter to respondent Secretary of the Department of Finance for review of the action taken by the Bureau of Customs on its Shipments, pursuant to Section 38 (1), Chapter 7, Book IV Executive Order No. 292.

The request for review was referred back by the then Undersecretary and Chief of Staff Antonio Bernardo to the Bureau of Customs, which in turn referred it to the District Collector, MICP.

Meanwhile, Deputy Commissioner Gil A. Valera sent a letter dated September 9, 2003 to petitioner informing the latter that he was directing the Legal Service to resolve the petition contained in the letter dated January 31, 2002 within thirty (30) days. He further stated that he will be recommending petitioner's delisting from the 'Watch List' upon posting of a surety bond.

On December 21, 2004, petitioner received a letter dated September 30, 2004 from the District Collector informing the former that the Office of the Commissioner had already issued a resolution/decision denying petitioner's request for review of the Committee's decision and petitioner's de-listing from the Hold Order List under CMO No. 6-2001.

Hence, the instant *Petition for Review* filed on January 21, 2005.

Respondents filed their *Answer* on May 9, 2005. After pre-trial, the parties filed their *Joint Stipulation of Facts and Issues* on July 8, 2005.

Petitioner presented its Marketing Manager Wilfredo I. Madridejos and its counsel Manuel Ll. Dionaldo, as witnesses; and Exhibits 'A' to 'R,' inclusive of their submarkings, as documentary evidence. The Court admitted all the evidence in Resolutions dated November 16, 2006 and April 13, 2007.

Counsel for respondent manifested that she will not present any witness but presented documentary evidence marked as Exhibits '1' to '4,' which were all admitted by the Court in a Resolution dated October 5, 2007.

After both parties had filed their respective Memorandum, the case was submitted for decision on January 17, 2008.[6] *(Citations omitted)*

The Ruling of the Court in Division

The following issues were submitted by the parties for resolution by the Court in Division:

"1. Whether petitioner is liable for additional duties and taxes for the First and Second Shipments of forged grinding balls amounting to P336,549.00 and P1,042,875.00, respectively;

2. Whether petitioner's inclusion in the Hold Order List under CMO 6-2001 has legal basis; and

3. Whether the subject upgraded valuation and assessment made by the Customs Appraiser and adopted by the BOC-SGS Appeals Committee is a protestable case within the purview of Sections 2308 and 2309, TCCP."[7]

At the outset, the Court in Division resolved the propriety of petitioner's course of action in pursuing the instant case. It ruled that it has no jurisdiction over the case, citing Section 7 of Republic Act No. 1125 ("RA 1125"), as amended by Republic Act No. 9282 ("RA 9282"), in relation to Section 2402 of the Tariff and Customs Code of the Philippines ("TCCP").

It explained that in customs cases where a party is adversely affected by a decision of the Collector, such party must observe the procedure provided for in Sections 2308 and 2309 of the TCCP. This is in line with the doctrine of exhaustion of administrative remedies, which requires that resort must first be

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[6] *Rollo*, pp. 50 - 56.
[7] *Id.*, p. 57.

made to the administrative authorities in cases falling under their jurisdiction to allow them to carry out their functions and discharge their responsibilities within the specialized areas of their competence.

Considering that petitioner did not file a written protest setting forth its objections to the tariff classification in the Decision of the Collector, the Court in Division found that the action of the Collector to collect the additional duties has become final and conclusive upon petitioner, which justified its inclusion in the Hold Order List under CMO 6-2001. As a result, the Decision of the Collector could not be elevated to the respondent COC. And since the respondent COC did not render any decision that is appealable to the Court of Tax Appeals, the Court in Division refused to take cognizance of the case, and no longer resolved the remaining issues raised by petitioner.

Thus, the Court in Division disposed of the case in this wise:

> "**WHEREFORE,** the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of P1,042,875.00 and P336,549.00, representing additional duties for the shipments covered by Entry Nos. C-26222-00 and C-8511-00, respectively, plus legal interest of six percent (6%) *per annum* from the date of demand up to finality of this Decision. Upon the finality of this Decision, the sum so awarded shall bear an interest at the rate of twelve percent (12%) *per annum* until its full satisfaction.
>
> **SO ORDERED.**"[8]

On August 7, 2008, petitioner filed a "Motion for Reconsideration"[9] to which respondents filed their "Comment."[10]

[8] *Rollo*, p. 62.
[9] *Records*, C.T.A. No. 7133, pp. 550 - 572.
[10] *Id.*, pp. 577 - 584.

On December 3, 2008, the Court in Division denied the "Motion for Reconsideration" for lack of merit.[11] It ruled that:

> "After a careful examination and comparison of petitioner's Memorandum and the instant Motion, it is here noted that the reasons and arguments raised in the latter are mere reiterations set forth in the former which have already been considered, weighed and resolved in the Court's Decision. The restructuring and further embellishment of language, even with increased dashes or emphasis, do not remove a pleading or motion from the stigma of being *pro forma,* especially when it is evident that such reinforcement could just as well have been duly taken advantage of earlier in petitioner's Memorandum.
>
> If there were any new matters in petitioner's Motion, they were hardly of any material consequence to the results. Surely, the *pro forma* nature of said Motion may not be obliterated by new matters that would not anyway significantly alter the result. For instance, reference was made to Section 2303 of the Tariff and Customs Code, by way of analogy, to bolster petitioner's contention that the observance of due process is required. Even if this matter is to be considered new because it was not mentioned in the Memorandum of petitioner, the same had already been sufficiently addressed in the assailed Decision when it was declared that there is no denial of procedural due process.
>
> Thus, when a Motion for Reconsideration merely reiterates, in a more or less expanded, different or more embellished form, points, arguments or matters which cannot conceivably alter the result, the said Motion cannot be saved from being declared *pro forma.*"[12]

The Issues

Hence, the present recourse where petitioner interposes that the Court in Division erred in dismissing the case for the following reasons:

> "A
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> Petitioner's Motion for Reconsideration is not Pro-Forma.
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> B
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> A written protest under Sections 2308, 2309 and 2312 of the Tariff and Customs Code of the Philippines ('TCCP') is not applicable in the instant case.

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[11] *Rollo*, pp. 64 -66.
[12] *Id.*, pp. 65 -66.

C

Petitioner is not liable for the additional duties and taxes for the First and Second Shipments of forged grinding balls amounting to P336,549.00 and P1,042,875.00, respectively.

D

The Court of Tax Appeals has jurisdiction over the case at bar, it being an appeal from a decision by the Commissioner of Customs."[13]

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

As the Court sees it, the crux of the controversy boils down to whether or not the Court has jurisdiction over the instant case.

It is elementary that the Court's appellate jurisdiction is to review the decisions of the COC in any matter brought before the latter "upon protest," as well as in cases involving claims for refund.[14] This is pursuant to Section 7 of RA 9282 and Section 2402 of the TCCP, which provide that:

"**SEC. 7.** ***Jurisdiction.*** — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx xxx xxx

(4) **Decisions of the Commissioner of Customs in cases** involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

xxx xxx xxx" *(Emphasis supplied)*

"**SEC. 2402.** *Review by Court of Tax Appeals.* — The party aggrieved by a **ruling of the Commissioner** in any matter brought before him upon protest or by his action or ruling in any case of seizure may appeal to the Court of Tax Appeals, in the manner and within the period prescribed by law and regulations.

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[13] *Rollo,* p. 21.

[14] Sol Oil, Inc. v. The Commissioner of Customs, C.T.A. Case No. 4407, June 9, 1994.

> Unless an appeal is made to the Court of Tax Appeals in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive." *(Emphasis supplied)*

Based on the foregoing, the cause of action accrues from the time the COC issues his final decision on the protest made by the taxpayer.[15] However, in order for the COC to acquire jurisdiction over the protest, the pertinent provisions of the TCCP must be followed:

> "**SEC. 2308.** ***Protest and Payment upon Protest in Civil Matters.*** — When a ruling or decision of the Collector is made whereby liability for duties, taxes, fees or other charges are determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within fifteen (15) days thereafter, a written protest setting forth his objection to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee, as provided for in Section 3301.
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> **SEC. 2309.** ***Protest Exclusive Remedy in Protestable Case.*** — In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters collectible for manifest error in the manner prescribed in section one thousand seven hundred and seven hereof.
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> **SEC. 2310.** ***Form and Scope of Protest.*** — Every protest shall be filed in accordance with the prescribed rules and regulations promulgated under this section and shall point out the particular decision or ruling, of the Collector to which exception is taken or objection made, and shall indicate with reasonable precision the particular ground or grounds upon which the protesting party bases his claim for relief.
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> The scope of a protest shall be limited to the subject matter of a single adjustment or other independent transaction, but any number of issue may be raised in a protest with reference to the particular item or items constituting the subject matter of the protest.
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> 'Single adjustment,' as hereinabove use, refers to the entire content of one liquidation, including all duties, fees, surcharges or fines incident thereto.

[15] Philippine Clearing House Corporation v. The Commissioner of Customs, C.T.A. Case No. 4339, February 4, 1994.

> **SECTION 2311.** *Samples to be Furnished by Protesting Parties.* — If the nature of the articles permit, importers filing protests involving questions of fact must, upon demand, supply the collector with samples of the articles which are the subject matter of the protest. Such samples shall be verified by the customs official who made the classification against which the protests are filed.
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> **SECTION 2312.** *Decision or Action by Collector in Protest and Seizure Cases.* — When a protest in proper form is presented in a case where protest is required, the Collector shall issue an order for hearing within fifteen (15) days from receipt of the protest and hear the matter thus presented. Upon the termination of the hearing, the Collector shall render a decision within thirty (30) days, and if the protest is sustained, in whole or in part, he shall make the appropriate order, the entry reliquidated necessary.
>
> xxx xxx xxx
>
> **SECTION 2313.** *Review of Commissioner.* — The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification on writing by the Collector of his action or decisions, file a written notice to the Collector with a copy furnished to the Commissioner of his intention to appeal the action or decision of the Collector to the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision: Provided, That when an appeal is filed beyond the period herein prescribed, the same shall be deemed dismissed.
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> xxx xxx xxx."

Pursuant to the said Code, the adverse party aggrieved by the assessment issued by the Collector may question the assessment by filing a written protest; otherwise, the action of the Collector shall become final and unappealable. Thereafter, if the Collector's decision is adverse to the party, the latter can then appeal the matter to the COC, whose decision can be elevated before this Court for review.[16]

[16] Philippine Clearing House Corporation v. The Commissioner of Customs, *supra*, at note 15.

In this case, no formal protest was made before the Collector in accordance with the TCCP, despite the fact that the respondent COC in his letter dated May 9, 2001[17] already informed petitioner that:

> "xxx the BOC-SGS Appeals Committee has lost its jurisdiction to rule on your request considering that the written resolution thereof has already been forwarded and received by the Collection Division before receipt of your said request. Pursuant to CMO 12-93, Appeals Committee decisions are deemed final and executory upon receipt by the Collection Division of the final resolution.
>
> Said resolution adopted the appraiser's recommended value based on RO11-97/5-97 at US$1,999.58/MT and US$1,499/MT but less 20% allowance for being a third country, respectively, which was sourced from a previous Committee decision under CRF No. 028653, as well as the fact that the importer failed to submit any evidence to warrant a change of the questioned resolution.
>
> Considering the foregoing, **you may avail of the protest remedy accorded to you under Section 2308 of the Tariff and Customs Code of the Philippines, as amended.**" *(Emphasis supplied)*

It bears stressing that a protest is required in matters affecting the legality of the collection under Customs Law of other fees and charges.[18] Failure on the part of petitioner to avail of the correct remedy under the law, renders the Decision of the Collector final and executory. In fact, in the 5th Indorsement dated November 21, 2003,[19] the respondent COC denied petitioner's request to review the Collector's decision, as the said decision has become final and executory. Quoted hereunder is the pertinent portion of the said Indorsement:

> "xxx xxx xxx
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> At the outset, it must be informed that there is no pending case before the Legal Service, this Bureau, concerning the said shipments of GST. On the contrary, the subject shipments were held liable for and duly assessed additional taxes and duties in a Decision of the BOC-SGS

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[17] *Records*, p. 290, *Exhibit "G."*

[18] Solid Mills, Inc., et. al. v. Commissioner of Customs, C.T.A. Case No. 2995, November 28, 1980; citing *Luzon Stevedoring Corporation v. Court of Tax Appeals and Commissioner of Customs, L-21005, October 22, 1966, 18 SCRA 436; Victorias Milling Co., Inc. v. Auditor General, L-17414, November 30, 1962, 6 SCRA 822.*

[19] *Records*, pp. 310 – 311, *Exhibits "M-4 and M-5."*

> Import Valuation and Classification Committee (BOC-SGS Committee) for additional duties and taxes amounting to Php1,379,424.00 duly approved by the MICP District Collector. However, instead of filing a protest, which is the remedy provided under the Tariff and Customs Code of the Philippines (TCCP), GST unwarrantedly requested your Office to review the action taken thereon. Consequently, the foregoing BOC-SGS Committee/MICP District Collector's decision became final and executory.
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> xxx xxx xxx"

Since no written protest was made by petitioner, there can be no decision or ruling by the respondent COC, which would require the exercise by this Court of its appellate jurisdiction. The Court need not belabor that to satisfy the jurisdictional requirements of law, the procedure prescribed by the TCCP on protests (Sections 2308-2314 & 2402) in relation to Sections 7 & 11 of RA 1125, as amended by RA 9282, should be followed. Non-compliance with the mandatory procedural requirements would render fatally defective the appeal and would thereby result to its dismissal.[20]

Relevant to this case is the ruling in the case of ***Armovit v. The Commissioner of Customs***,[21] to wit:

> "As no formal protest was made before the Collector of Customs who made the ruling on the liability in accordance with the above law and prescribed rules and regulations, the action of the Collector has become final and conclusive against the petitioner. This incontrovertible fact that no protest was filed is confirmed by a certification issued by the Chief of the Legal Division, MICP, that 'no protest was filed by the consignee RAYMUNDO A. ARMOVIT, relative to the shipment of one (1) unit Mercedes Benz SD Turbo, 1982 Model, 4-door, 5 cylinder, Chassis No. WDB 12612012030719.' *(Exh. G, p. 98, CTA records).* **Failure on the part of petitioner to file a formal protest as required by law was fatal to his cause.** The decision of the Collector has already become final and conclusive. **It had the primary and exclusive jurisdiction to rule on the tax liability and duties on the vehicle in question.** It constitutes a tribunal upon which the law confers jurisdiction to hear and determine all questions touching on the assessment and further disposition on the

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[20] Chemphil Manufacturing Corporation v. Commissioner of Internal Revenue and Commissioner of Customs, C.T.A. Case No. 3891, November 27, 1986.
[21] C.T.A. Case No. 4578, January 21, 1994.

matter *(cf. Papa vs. Mago, 22 SCRA 857 1968).* Having failed therefore to register his protest as required by law to take exception to the ruling made by the Collector on his liability for duties, taxes and other charges which was formally communicated to the petitioner, he lost the opportunity to contest said assessment *(See Silver Swan Mfg. Co., Inc. vs. Commissioner of Customs C.T.A. Case [RES] No. 744, June 29, 1960, affd. in G.R. No. L-17435, June 29, 1963, 8 SCRA 400).*

Likewise, **petitioner failed to observe the principle of exhaustion of the administrative remedies provided by law.** As impliedly stated in the case of *Rufino Lopez and Sons, Inc. vs. Court of Tax Appeals, 100 Phil. 850* and restated in the case of *Sampaguita Shoe and Slipper Factory vs. Commissioner of Customs, 102 Phil. 850,* **the doctrine of exhaustion of administrative remedies is a condition sine qua non before one resort to Courts because it is a sound rule for 'it provides for a policy of orderly procedure which favors to preliminary administrative sifting process, and serves to prevent attempts to swamp the courts by a resort to them in the first instance.'**

In addition, it has been ruled by our Supreme Court in the case of *Ysmael vs. Deputy Executive Secretary, et al., G.R. No. 79538, October 18, 1990,* that: It is an established doctrine in this jurisdiction that the decisions and orders of administrative agencies have upon their finality, the force and binding effect of a final judgment within the purview of the doctrine of *res judicata*. These decisions and orders are as conclusive upon the rights of the affected parties as though the same had been rendered by a court of general jurisdiction. The rule of *res judicata* thus forbids the reopening of a matter once determined by competent authority acting within their exclusive jurisdiction *(also Brilliantes vs. Castro, 99 Phil. 497 [1956]; Ipekdjian Merchandising Co., Inc. vs. Court of Tax Appeals, G.R. No. L-15430, September 30, 1963, 9 SCRA 72; San Luis vs. Court of Appeals, G.R. No. 80160, June 26, 1989).*

The act of Petitioner in raising his protest directly to the Commissioner of Customs as stated in his letter of August 10, 1990, is violative of this principle of exhaustion of Administrative remedies.

It may not be amiss to state that the grounds raised by the petitioner before this Court could have been properly ventilated in the formal protest which he should have filed before the Collector of Customs. Petitioner did not avail of its remedies under the law. **This Court therefore is in no position to reopen the matter which has already been finally decided by the competent authority acting within its exclusive jurisdiction."** *(Emphasis supplied)*

Finding that the Court has no jurisdiction to take cognizance of the instant controversy, it becomes unnecessary to resolve the other issues raised by petitioner.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED**. Accordingly, the Decision dated July 17, 2008 and the Resolution dated December 3, 2008 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice