REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AGFHA, INCORPORATED, Petitioner, - versus - **COMMISSIONER OF CUSTOMS,** Respondent.	**CTA EB NO. 1781** (CTA Case No. 5290) Present: **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.* Promulgated: AUG 13 2019 3:05 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the reversal of the Resolutions[1] dated September 15, 2017 and January 16, 2018 ("Assailed Resolutions") of the Court of Tax Appeals Special Second Division ("Special Second Division"), denying Petitioner's "Manifestation with Motion for Recomputation"[2] dated February 01, 2017 and "Motion for Reconsideration"[3] dated September 30, 2017, respectively.

The Facts

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1 Penned by Associate Justice Erlinda P. Uy, with Associate Justice Juanito C. Castañeda, Jr. concurring. Docket, pp. 3182-3186 and 3201-3203.

2 *Id*, pp. 3151-3158.

3 *Id*, pp. 3187-3189.

In a Decision[4] dated March 28, 2011, the Supreme Court found Respondent liable to pay Petitioner the amount of $160,348.08 for the value of the seized shipment, which was lost while in Respondent's custody. The dispositive portion of the Supreme Court decision reads:

> "**WHEREFORE**, the February 25, 2009 Decision of the Court of Tax Appeals En Banc in CTA EB Case No. 136, is **AFFIRMED**. The Commissioner of Customs is hereby ordered to pay, in accordance with law, the value of the subject lost shipment in the amount of US$160,348.08, **computed at the exchange rate prevailing at the time of actual payment** after payment of the necessary customs duties."[5]

On September 15, 2011, a Writ of Execution[6] was issued by the Court of Tax Appeals Former Second Division ("Former Second Division").

On September 22, 2011, Petitioner filed a "Motion for Clarification/Correction"[7] before the Supreme Court praying that the dispositive portion of the March 28, 2011 Decision be clarified and corrected insofar as the rate of interest on the obligation of Respondent to Petitioner is concerned. On July 18, 2012, the Supreme Court issued a Resolution[8] granting the Motion and clarifying that:

> "...the decision in this case includes the payment of interest as stated in the October 18, 2005 Decision of the Second Division of the Court of Tax Appeals."[9]

On October 29, 2012, Petitioner filed before the Former Second Division a "Motion for Amended Writ of Execution"[10].

On July 19, 2013, the Former Second Division issued an Amended Writ of Execution[11], pertinent portion of which states:

> "**NOW THEREFORE**, you, the Commissioner of Customs, your authorized subordinate official/s and/or representative/s are hereby ordered to pay AGFHA, Inc., the winning party, in accordance with law, the value of the subject lost

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4 *Id*, pp. 2216-2230.
5 *Id.*, p. 2229; *Emphasis and underscoring supplied.*
6 *Id.*, pp. 2274-2277.
7 *Id.*, pp. 2286-2290.
8 *Id.*, pp. 2317-2322.
9 *Id.*, p. 2321.
10 *Id.*, pp. 2328-2331.
11 *Id.*, pp. 2421-2429.

> shipment in the amount of US$160,348.08, with legal interest from February 1993 until herein respondent pays the full amount of his obligation, pursuant to the July 18, 2012 Resolution of the Supreme Court, which had already become final and executory.
>
> The Sheriff of this Court is ordered to see to it that this Writ is carried out by respondent Commissioner of Customs and to make the corresponding return thereon, within thirty (30) days from receipt of the Writ."[12]

On January 28, 2015, the Former Second Division issued a Second Amended Writ of Execution[13] adding the payment of attorney's fees in favor of then counsel for Petitioner at ten percent (10%) of the total amount recoverable. On February 03, 2016, the sheriff of the Second Division submitted a return which reads:

> "On September 11, 2015 and October 29, 2015, the Bureau of Customs forwarded the Writ of Execution issued by this Honorable Court dated January 28, 2015 to the Department of Budget and Management (DBM) for implementation and release of payments. Despite numerous follow ups, no action was done yet by the DBM.
>
> As of today, as per Ms. Divina A. Pando, Accountant 3 of the Bureau of Customs, the said Writ of Execution is still with the DBM Bureau A."[14]

On December 19, 2016, Petitioner, allegedly through its President Mr. William Kho, received a check dated December 19, 2016 from Respondent.[15]

Thereafter, Petitioner filed a "Manifestation with Motion for Recomputation"[16] on February 08, 2017 before the Special Second Division. Arguing that the date of actual payment falls on December 19, 2016, the check dated December 19, 2016 in the amount of Seventeen Million Four Hundred Fourteen Thousand One Hundred Seventy-Two Pesos & 5/100 (Php17,414,172.05) issued in Petitioner's favor, in satisfaction of the money judgment rendered in the case, was erroneous since it was based on the exchange rate prevailing on April 29, 2016.

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[12] *Id.*, p. 2429.
[13] *Id.*, pp. 2746-2756.
[14] *Id.*, p. 2955.
[15] Rollo, Petition for Review, Statement of Facts and Relevant Proceedings, par. 16, p. 14.
[16] Docker, pp. 3155-3160.

On September 15, 2017, the Special Second Division issued a Resolution[17] denying Petitioner's "Manifestation with Motion for Recomputation" for lack of merit, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, petitioner's **Manifestation with Motion for Recomputation** is **DENIED** for lack of merit."[18]

In denying Petitioner's "Manifestation with Motion for Recomputation", the Special Second Division held that there is nothing in the records proving that there was actual payment on December 19, 2016. In the same way, Respondent Commissioner of Customs therein also failed to prove his allegation that Petitioner refused to receive the check in full payment of his obligation on May 10, 2016. Lastly, the Special Second Division ruled that even if it was proven that there was refusal by Petitioner to accept the check on May 10, 2016, tender of payment is not enough since to have the effect of payment the law requires both tender of payment and consignation.

Aggrieved, Petitioner filed a "Motion for Reconsideration"[19] on October 04, 2017, which the Special Second Division denied in the Resolution[20] dated January 16, 2018, thus:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit."[21]

The Proceedings with the Court En Banc

On February 06, 2018, Petitioner filed a "Motion for Extension of Time to File Petition for Review",[22] which the Court granted in a Minute Resolution[23] dated February 08, 2018.

On February 22, 2018, Petitioner filed the present "Petition for Review".[24]

On March 23, 2018, a Resolution[25] was issued ordering Respondent to file his comment within ten (10) days from notice.

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[17] *Id.*, pp. 3181-3186.
[18] *Id.*, pp. 3185-3186.
[19] *Id.*, pp. 3187-3189.
[20] *Id.*, pp. 3201-3203.
[21] *Id.*, p. 3203.
[22] Rollo, pp. 17. Record shows that Petitioner received the January 16, 2018 Resolution on January 23, 2018; Docket, p. 3200.
[23] *Id.*, p. 9.
[24] *Id.*, pp. 10-24.
[25] *Id.*, pp. 93-94.

On May 03, 2018, Respondent filed a "Motion for Extension of Time to File Comment"[26], which the Court granted in a Minute Resolution[27] dated May 07, 2018. Of even date, Respondent filed its "Comment"[28].

Thereafter on June 05, 2018, the Court issued a Resolution[29] giving due course to the Petition for Review, and directing the parties to submit their respective memoranda within thirty (30) days from receipt.

On July 10, 2018, Respondent filed its "Memorandum"[30]. On September 07, 2018, the Court issued a Resolution[31] submitting the instant case for decision.

Assignment of Error

Petitioner raises a single ground in support of its petition – the Special Second Division gravely erred in denying Petitioner's Motion for Recomputation and Motion for Reconsideration due to alleged Petitioner's failure to prove date of actual payment.[32]

The Arguments of the Parties

Petitioner contends that there is judicial admission that Respondent paid Petitioner on December 19, 2016. There is no more need to establish actual date of receipt of payment. Thus, the exchange rate that should have been used in converting Respondent's monetary liability into Philippine currency, according to Petitioner, should be based on December 19, 2016, and not the exchange rate prevailing on April 29, 2016. This is in line with the Supreme Court Decision dated March 28, 2011 that the value of the subject lost shipment must be computed at the exchange rate prevailing at the time of actual payment.

Petitioner further claims that a recomputation does not violate the doctrine of immutability of the judgment rendered in Petitioner's favor, for it is a necessary consequence in view of the failure of Respondent to comply with the decision of the Court.

By way of comment, Respondent counter-argues that it did not make such admission.

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26 *Id.*, pp. 95-99.
27 *Id.*, p. 100.
28 *Id.*, pp. 101-109.
29 *Id.*, pp. 111-112.
30 *Id.*, pp. 113-126.
31 *Id.*, pp. 129-130.
32 *Id.*, Petition for Review, Issue, p. 15.

Respondent also opines that in view of Petitioner's misplaced reliance on the concept of judicial admission, the all-encompassing rule in evidence applies: a party who alleges a fact has the burden of proving it. A mere allegation is not evidence, and he who alleges has the burden of proving his allegation with the requisite quantum of evidence.

The Ruling of the Court

The Court En Banc has jurisdiction over the present petition

The Court in Division issued the assailed Resolution, denying Petitioner's "Motion for Reconsideration" dated September 30, 2017, on January 16, 2018. Petitioner received said Resolution on January 23, 2018. Pursuant to Rule 4, Section 2(a)(1)[33] in relation to Rule 8, Section 3(b)[34] of the Revised Rules of the Court of Tax Appeals[35] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the Resolution or until February 07, 2018 within which to file its petition for review.

On February 06, 2018, Petitioner timely filed a "Motion for Extension of Time to File Petition for Review", praying for an extension of fifteen (15) days or until February 22, 2018 within which to file the Petition for Review. The Court granted the same in a Minute Resolution[36] dated February 08, 2018.

On February 22, 2018, Petitioner timely filed the present "Petition for Review".[37] Hence, the Court *En Banc* validly acquired jurisdiction.

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[33] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[34] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[35] A.M. No. 05-11-07-CTA, November 22, 2005.

[36] *Id.*, p. 9.

[37] *Id.*, pp. 10-24.

There is no compelling reason to reverse or modify the Court in Division's Assailed Resolutions.

It must be emphasized that the issue raised in the petition is a mere reiteration of the same issue which had already been duly considered, passed upon and resolved by the Special Second Division in the Assailed Resolutions.

The instant Petition for Review, similar to Petitioner's "Motion for Reconsideration"[38] filed on October 04, 2017 with the Special Second Division, insists that Respondent made a judicial admission that Petitioner received the check on December 19, 2016. Consequently, Petitioner argues, there is no more need to establish actual date of payment. According to Petitioner, the check it received from Respondent was for an incorrect amount, since the same was based on the exchange rate prevailing on April 29, 2016 instead of December 19, 2016.

Upon perusal of the instant petition, We find Petitioner's contention to be without merit and the reliance on the general rule regarding judicial admissions misplaced.

It is true that judicial admissions are legally binding on the party making the admissions. Section 4 of Rule 129 of the Rules of Court, provides that:

> "**An admission**, verbal or written, **made by a party in the course of the proceedings in the same case, does not require proof**. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made."[39]

Thus, a party who judicially admits a fact cannot later challenge the fact as judicial admissions are a waiver of proof. Production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy.[40]

However, as contemplated in the aforementioned provision of the Rules of Court, the general rule regarding conclusiveness of judicial admission upon the party making it and the dispensation of proof admits of two (2) exceptions:

1) when it is shown that the admission was made through palpable mistake, and

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[38] *Id.*, pp. 3187-3189.
[39] *Emphasis supplied.*
[40] Joshua S. Alfelor v. Josefina M. Halasan, G.R. No. 165987, March 31, 2006.

2) when it is shown that no such admission was in fact made.

The latter exception allows one to contradict an admission by denying that he made such an admission. For instance, if a party invokes an admission by an adverse party, but cites the admission as out of context, then the one making the admission may show that he made no "such" admission, or that his admission was taken out of context. This may be interpreted as to mean "not in the sense in which the admission is made to appear." That is the reason for the modifier "such".[41]

Here, Petitioner appears to have taken the admission made by Respondent in paragraph 7 of Respondent's "Comment"[42] to the Motion for Recomputation "out of context". Petitioner is seemingly misleading this Court by isolating paragraph 7. A careful scrutiny of the Comment in its entirety will show that paragraph 7 is a continuation of the allegations of fact made by Respondent narrating the events surrounding the alleged check payment. Paragraphs 3 to 7 of the Comment alleges that as early as May 10, 2016, a Land Bank check was already prepared by Respondent in payment of its obligation. However, Petitioner allegedly refused to acknowledge receipt and made a few requests regarding the check, Respondent continued.

From above, it is clear that no admission was made by Respondent in its Comment. The general rule applies. A party who alleges a fact has the burden of proving it. A mere allegation is not evidence, and he who alleges has the burden of proving his allegation with the requisite quantum of evidence.[43]

This Court cannot simply accept hook, line and sinker Petitioner's allegation that the prevailing exchange rate to be used should be the rate on December 19, 2016. We agree with the Special Second Division that "the Court cannot make a determination without any evidence to support Petitioner's allegations."[44]

With the above disquisition, the Court will no longer belabor on the rest of Petitioner's arguments.

From all the foregoing, We find no cogent reason to disturb the findings found by the court *a quo.*

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[41] Florentino Atillo, III v. Court of Appeals, G.R. No. 11905, January 23, 1997 *citing* Paras, Rules of Court Annotated, p. 66, *citing* the Minutes of the Revision Committee.
[42] Docket, pp. 3172-3177.
[43] Spouses Nilo Ramos and Eliadora Ramos v. Raul Obispo and Far East Bank and Trust Company, G.R. No. 193804, February 27, 2013.
[44] *Id.*, Resolution dated February 24, 2016, pp. 751-752.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The Resolutions dated September 15, 2017 and January 16, 2018 of the Court of Tax Appeals Special Second Division in CTA Case No. 5290 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(took no part)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(took no part)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

AGFHA, INCORPORATED,
Petitioner,

-*versus*-

COMMISSIONER OF CUSTOMS,
Respondent.

CTA EB NO. 1781
(CTA Case No. 5290)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and,
Modesto-San Pedro, JJ.

Promulgated:

AUG 13 2019
3:05 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I submit that the records of the case sufficiently justify the grant of the pleaded recomputation of the Philippine Peso equivalent of the money judgment granted in favor of petitioner.

Records show that respondent used the prevailing exchange rate on April 29, 2016 in computing the Philippine Peso equivalent of its US$160,348.08 liability to petitioner. Respondent claims that said exchange rate was used when it prepared Land Bank Check No. 781455 dated May 10, 2016, which petitioner's President, Wilson Kho, refused to receive. Respondent argues that since the check was first presented to petitioner in May 2016, the use of the prevailing exchange rate at the time of its preparation on April 29, 2016 was proper. According to respondent, to use the exchange rate prevailing on December 19, 2016, the date when Wilson Kho received the check, is to effectively pin what exchange rate would govern on the sole whim of petitioner.

To my mind, even assuming that respondent made a tender of Land Bank Check No. 781455 on May 10, 2016, the same - - *sans* consignation was not sufficient to constitute actual payment as to discharge it of its obligation.

Article 1256 of the New Civil Code of the Philippines provides that if the creditor to whom tender of payment has been made refuses without just cause to accept it, **the debtor shall be released from responsibility by the consignation of the thing or sum due**.

Consignation is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment and it generally requires a prior tender of payment.[1] In order that consignation may be effective, the debtor must first comply with certain requirements prescribed by law. The debtor must show (1) that there was a debt due; (2) that the consignation of the obligation had been made because the creditor to whom tender of payment was made refused to accept it, or because he was absent or incapacitated, or because several persons claimed to be entitled to receive the amount due (Art. 1176, Civil Code); (3) that previous notice of the consignation had been given to the person interested in the performance of the obligation (Art. 1177, Civil Code); (4) that the amount due was placed at the disposal of the court (Art. 1178, Civil Code); and (5) that after the consignation had been made the person interested was notified thereof (Art. 1178, Civil Code).[2]

In the case of *Spouses Bonrostro vs. Spouses Luna*,[3] the Supreme Court elucidated that mere tender of payment, without valid consignation, does not have the effect of payment, *viz.*:

> "Tender of payment is the manifestation by the debtor of a desire to comply with or pay an obligation. If refused without just cause, **the tender of payment will discharge the debtor of the obligation to pay but only after a valid consignation of the sum due shall have been made with the proper court**. Consignation is the deposit of the proper amount with a judicial authority in accordance with rules prescribed by law, after the tender of payment has been refused or because of circumstances which render direct payment to the creditor impossible or inadvisable.

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[1] Soco vs. Militante, G.R. No. L-58961 June 28, 1983.
[2] *Id.*
[3] G.R. No. 172346, July 24, 2013; cited by the Court in Division in its assailed Resolution dated September 15, 2017.

> Tender of payment, without more, produces no effect. To have the effect of payment and the consequent extinguishment of the obligation to pay, the law requires the companion acts of tender of payment and consignation." (Boldfacing supplied)

On the other hand, respondent admitted in its Comment to the present Petition for Review that on December 19, 2016, Wilson Kho received the check in the presence of the Sheriff of this Court without reservation.[4] Truth to tell, it appears from a plain perusal of **Annex B** of petitioner's Manifestation with Motion for Recomputation that the Check dated December 19, 2016 in the amount of Php17,414,172.05[5] was encashed. Such receipt and encashment of the check by petitioner constitute actual partial payment that partially extinguished respondent's obligation to petitioner.

Considering that there was actual partial payment on December 19, 2016, I submit that respondent should be directed to immediately recompute the Philippine Peso equivalent of the amount of US$160,348.08 using the prevailing exchange rate on December 19, 2016; and after recomputation, to deduct therefrom the amount of Php17,414,172.05 representing the partial payment made to petitioner; and, to pay petitioner the difference between said amounts.

All told, I VOTE to: (i) GRANT the Petition for Review filed by Agfha, Incorporated; and, (ii) ORDER respondent Commissioner of Customs to make the recomputation and payment as aforediscussed.

ROMAN G. DEL ROSARIO
Presiding Justice

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[4] CTA *En Banc* Docket, p. 103.
[5] Philippine Peso equivalent of US$160,348.08, using also the prevailing exchange rate on April 29, 2016, the date when the Check dated May 10, 2016 in the amount of Php17,414,172.05 was prepared.