REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**FIRST DIVISION**

**MILLIONSTAR GRAINS CORP., Represented by its President/General Manager, MS. JAENA BAUTISTA-MANUNTAG,**
*Petitioner,*

**- versus -**

**HON. DISTRICT COLLECTOR OF CUSTOMS, Port of Manila International Container Terminal (MICT) S Access Road, North Harbor, Port Area, Tondo, Manila; and**

**HON. REY LEONARDO GUERRERO, Commissioner of Bureau of Customs, Ground Floor, OCOM Building, 16th Street, South Harbor, Port Area, Manila,**
*Respondents.*

CTA Case No. 10769

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO *JJ.*

Promulgated:

MAR 2 5 2022 9:20 am

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## RESOLUTION

The following statements are alleged in petitioner's Petition for Review of Protest and Appeal for Duty and Tax Refund, to wit:

Petitioner is a corporation duly registered with the Securities and Exchange Commission with office address at Lot 13, Block 17, Unit 1 Blessed Building, Marcos Alvarez Avenue, Talon Singko, Las Piñas City.

On October 20, 2021, petitioner instituted a Protest and Appeal for Duty and Tax Refund to the office of respondent Commissioner of

Customs (COC), praying for the refund of excessive charges of customs duty and/or tax collected from petitioner on its rice shipments.

According to petitioner, the customs duty and tax upon its rice shipment was erroneous as it failed to follow the applicable Transaction Value System - Method One under Section 701 of Republic Act No. 10863,[1] as shown in the following table:

| ITEM # | Arrival Date of Shipment From Exporter | Product Invoice # | Date Protest Received by the Bureau of Customs | Bill of Lading Number | Entry Number | Particulars of Vessel Boarded & Registry # | Details of goods shipped from supplier to importing Consignee | Customs Duty inappropriately imposed based on Reference Value/mt. | Customs Duty for Consignee based on Transaction Value per GATT/Sec. 701 Chap.1 RA No. 10863 | Over-charged amount of Duty Collected and Disputed by Consignee |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | Sep. 6, 2021 | CI-155/ANT/2021 | Oct. 20, 2021 | #212107317 | C- 273020 | MAERSK NARVIK 131E<br>Reg. #MSK0162-21 | 29,800 bags @ 50kgs./bag Myanmar White Rice 25% Broken. | Php 6,435,379.41 | Php 2,993,645.68 | Php 631,327.48 |

Thus, petitioner filed the instant Petition for Review of Protest and Appeal for Duty and Tax Refund on February 16, 2022 to the Court.

This case merits outright dismissal.

Section 7(a)(4) of Republic Act (RA) No. 1125, as amended by RA No. 9282[2] provides that the Court of Tax Appeals (CTA) exercises exclusive appellate jurisdiction over *decisions* of respondent COC relating to liability for customs duties, fees, and 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, thus:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> xxx xxx xxx

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1 Customs Modernization and Tariff Act.

2 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

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.

To implement the above provision, Section 3(a)(4), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) mirrors Section 7(a)(4) of RA No. 1125, as amended by RA No. 9282 in this wise:

**RULE 4**
**JURISDICTION OF THE COURT**

**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:

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 of 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.

The nature of the action pleaded as appearing from the allegations in the complaint determines the jurisdiction of the Court. The averments therein and the character of the relief sought are the ones to be consulted.[3]

A scrutiny of petitioner's Petition reveals that: *first,* it submitted a protest and appeal for duty and tax refund to the respondent COC on October 20, 2021;[4] and *second,* the instant Petition was filed on February 16, 2022 by reason of respondents' *inaction* on its protest

[3] *Douglas F. Anama V. Citibank, N.A.*, G.R. No. 192048, December 13, 2017.
[4] Par. 2, page 2, Petitioner's Petition.

and appeal for duty and tax refund considering that over one hundred sixty (160) days have already lapsed since the filing of its Protest and Appeal for Duty and Tax Refund with respondent COC.[5] Since the present action is premised on the *inaction,* and *not the decision* of respondent COC on its claim for duty and tax refund, the Court is without jurisdiction to adjudicate the present case on the strength of Section 7(a)(4), RA No. 1125 as amended by RA No. 9282, as implemented by Section 3(a)(4), Rule 4 of the RRCTA. Note that when a court has no jurisdiction over the subject matter, such as the instant case, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void.[6]

Even assuming that the Court has jurisdiction over this case, the same shall be dismissed for petitioner's non-compliance with Sections 5 and 6, Rule 7 of the Revised Rules of Court, namely: *first,* failure to attach the authorization of the authorized representative to act on behalf of petitioner; and *secondly,* failure to specify the names of its witnesses in the Petition and attach their corresponding judicial affidavits, and failure to list the documents/exhibits intended to be presented.

**WHEREFORE**, the Petition for Review of Protest and Appeal for Duty and Tax Refund filed on February 16, 2022 by Millionstar Grains Corp., represented by its President/General Manager, Ms. Jaena Bautista-Manuntag is **DISMISSED** for lack of jurisdiction and for non-compliance with Sections 4 and 6, Rule 7 of the Revised Rules of Court.

**SO ORDERED.**

*(See Separate Concurring Opinion)*
**ROMAN G. DEL ROSARIO**
Presiding Justice

**CATHERINE T. MANAHAN**
Associate Justice

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

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5 Par. 11, page 3, id.
6 *Bilag v. Ay-Ay,* G.R. No. 189950, April 24, 2017.

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# SEPARATE CONCURRING OPINION

***DEL ROSARIO, P.J.:***

I concur in the dismissal of the present "**Petition for Review of Protest and Appeal for Duty and Tax Refund**", albeit on another ground.

**Timeliness of the filing of the present Petition for Review**

In its Petition for Review, petitioner claims that the customs duties for its rice importation should amount to ₱5,804,051.93 only based on the Transaction Value imposed under Section 701 of Republic Act (RA) No. 10863 or the Customs Modernization and Tariff Act (CMTA), and not the amount of ₱6,435,379.41 which was inappropriately imposed using on the Reference Value; thus, there was an alleged over-charging of customs duties by the District Collector amounting to ₱631,327.48.

Petitioner further alleges that on September 9, 2021, it paid to the Bureau of Customs (BOC) the assessed customs duties. Thereafter, petitioner filed a *"Protest and Appeal for Duty and Tax Refund"* on October 20, 2021 before the office of the BOC Commissioner. On December 21, 2021, petitioner moved for a reconsideration of the inaction of the BOC Commissioner on its protest.

As there was still no action on petitioner's protest and motion for reconsideration by the BOC Commissioner, petitioner filed the present Petition for Review on February 16, 2022.

Section 1110 of the CMTA provides:

> "SEC. 1110. *Decision in Protest.* – When a protest is filed in proper form, **the Commissioner shall render a decision within thirty (30) days from receipt of the protest. In case the protest is sustained, in whole or in part, the appropriate order shall be made**, and the entry reassessed, if necessary." *(Boldfacing supplied)*

Relatedly, Section 10.3 of **Customs Administrative Order (CAO) No. 02-2020**,[1] which prescribes the policies, guidelines, procedures on dispute settlement and protest in the BOC, states the following:

> "Section 10. <u>Protest</u>.
>
> xxx xxx xxx
>
> 10.3. When a protest is filed in proper form, **the Commissioner shall render a ruling within thirty (30) days from receipt of the protest.** Otherwise, the ruling of

[1] Subject: Dispute Settlement and Protest.

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> the Collector shall be **deemed affirmed** if the Commissioner fails to act on the same." *(Boldfacing supplied)*

As aforestated, the BOC Commissioner failed to act on the "Protest and Appeal for Duty and Tax Refund" on October 20, 2021 within thirty (30) days from the filing thereof; thus, upon the lapse of the said thirty (30)-day period on November 19, 2021, the BOC Commissioner is deemed to have affirmed the ruling of the District Collector of Customs. There was, therefore, a deemed denial decision by the BOC Commissioner of petitioner's protest.

This deemed denial decision is appealable to this Court pursuant to Section 7(a)(4) of RA No. 1125, as amended by RA No. 9282, and Section 3(a)(4), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), which state:

> "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[.]" *(Boldfacing supplied)*

> "RULE 4
> JURISDICTION OF THE COURT
>
> **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:
>
> (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 of other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs[.]" *(Boldfacing supplied)*

Based on the foregoing, since there was a deemed denial decision of petitioner's "Protest and Appeal for Duty and Tax Refund" on November 19, 2021, petitioner had until December 19, 2021 within

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which to file its Petition for Review before this Court. Since December 19, 2021 fell on a Sunday, petitioner had until December 20, 2021 within which to file its Petition for Review. The filing of the Petition for Review on February 16, 2022 was clearly made beyond the thirty (30)-day reglementary period to appeal. Thus, the Court has not acquired jurisdiction to take cognizance of the present Petition for Review.

**Timeliness of the filing of the Protest and Appeal for Duty and Tax Refund**

Even assuming that the present Petition for Review was timely filed, the same should nonetheless be dismissed on the ground that the ruling of the District Collector of Customs has become final and conclusive.

Sections 1106 and 1107 of the CMTA provide:

> "SEC. 1106. *Protest.* – **When a ruling or decision of the District Collector or customs officer** involving goods with valuation, rules of origin, and other customs issues is made, except the fixing of fines in seizure cases, **the party adversely affected may appeal by way of protest against such ruling or decision by presenting to the Commissioner 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 the objection to the ruling or decision in question and the reasons therefore.
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> xxx xxx xxx
>
> SEC. 1107. *Protest Exclusive Remedy in Protestable Case.* – In all cases subject to protest, the interest party who desires to have the action of the District Collector reviewed, shall file a protest as provided in Section 1106 of this Act, otherwise the action of the District Collector shall be **final and conclusive**."
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> xxx xxx xxx

Moreover, Section 10.1 of CAO No. 02-2020 also states:

> "Section 10. Protest.
>
> 10.1. The aggrieved importer or exporter or any stakeholder directly affected by the adverse ruling of the District Collector in all Protestable Cases arising from tariff classification, valuation, rules of origin or other customs issues, may appeal by way of **protest in writing to the Commissioner within fifteen (15) days from receipt of the adverse ruling**

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> **of the District Collector or, when payment is made as a result of the adverse ruling, within fifteen (15) days from such payment**. Otherwise, the action of the District Collector shall be final and conclusive.
>
> xxx xxx xxx" *(Boldfacing supplied)*

The remedy of the party adversely affected by the ruling of the District Collector of Customs is to file a written protest to the BOC Commissioner at the time of payment of the amount due to the government, or within fifteen (15) days thereafter, otherwise, the action of the District Collector shall be final and conclusive.

In the present case, petitoner admitted[2] in its "Petition for Review of Protest and Appeal for Duty and Tax Refund" that it paid the customs duties on September 9, 2021[3]. Petitioner had fifteen (15) days therefrom or until September 24, 2021 within which to file a protest before the BOC Commissioner. Petitioner only filed its "Protest and Appeal for Duty and Taxes" before the BOC Commissioner on **October 20, 2021** or **twenty-six (26) days late**.

There being no timely written protest filed by petitioner, the ruling of the District Collector of Customs on the valuation of petitioner's imported rice and the customs duties due thereon became final and conclusive. As a consequence thereof, the power of the Court to review the correctness of the valuation and the customs duties imposed on the subject imported rice could no longer be invoked.

All told, I **VOTE** to **DISMISS** the "**Petition for Review of Protest and Appeal for Duty and Tax Refund**" for lack of jurisdiction.

**ROMAN G. DEL ROSARIO**
Presiding Justice

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[2] Par. 6, Petition for Review of Protest and Appeal for Duty and Tax Refund.
[3] Annex "1".