REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

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PTT PHILIPPINES TRADING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS,
Respondent.

CTA CASE NO. 7981

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated: JUL 4 2011
ABFernand 2:15 p.m.

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RESOLUTION

For consideration is respondent's "**Motion to Dismiss**" filed on March 29, 2011, with petitioner's "**Opposition to Motion to Dismiss (Filed by Respondent Commissioner of Customs)**" filed on April 19, 2011, praying for the dismissal of the instant petition anchored on the following grounds:

I

The assailed letters demanding petitioner to pay the assessed duties, taxes and penalties conformably with the finding of the joint audit team had long become final and executory

II

Petitioner is guilty of forum shopping; hence, the present petition must be summarily dismissed.

In support of the first ground, respondent claims that petitioner admits that it received a copy of the assailed final demand letter dated November 7, 2007 on November 12, 2007. However, it only filed the present petition on September 30, 2009 or almost two years from the time it received a copy of the assailed final demand letter. Thus, respondent contends that the instant petition was filed beyond the reglementary period of thirty days within which to appeal decisions of the Commissioner of Customs pursuant to Section 9 of Republic Act (RA) 9282. Being so, the final demand letter had become final and executory and therefore, this Court has no more jurisdiction to entertain the instant petition.

Anent the second ground, respondent posits that petitioner is guilty of forum shopping and the present petition should be summarily dismissed.

Respondent points out that petitioner filed four petitions for review before this Court. An examination of the present petition and the earlier filed petitions, docketed as CTA Case Nos. 7707, 8002 and 8023, reveals that the elements of *litis pendentia* are present considering that all the petitions are assailing the final demand letter dated November 7, 2007, the allegations therein are almost identical and the reliefs prayed for are likewise identical and founded on the same facts.

On the other hand, petitioner counter argues that:

I.

> Contrary to the assertions of Respondent Commissioner of Customs, the Final Demand letter dated 7 November 2007 cannot be deemed final and executory.

II.

> The filing of the Petition does not constitute forum shopping since not all the elements of *litis pendentia* are present herein.

III.

> Jurisdiction by estoppel does not apply.

Considering the arguments of both parties, this Court finds merit in respondent's *Motion to Dismiss.*

We agree with respondent's contention that when petitioner filed the instant Petition on September 30, 2009, the assailed final demand letter dated November 7, 2007, received by petitioner on November 12, 2007, had already become final and executory for failure of petitioner to file its appeal on time, as provided in Section 9 of RA 9282, *viz*:

> "Section 9. Section 11 of the same act is hereby amended to read as follows:
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> Section 11. *Who may appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a **decision**, ruling or inaction of the Commissioner of Internal Revenue, the **Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section (7)(a)(2) herein.**[1]
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule

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[1] 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.

> 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx." (*Emphasis supplied.*).

Applying the foregoing, petitioner received the final demand on November 12, 2007, counting thirty days therefrom is December 12, 2007. The filing of the instant petition on September 30, 2009 is apparently way beyond the prescribed reglementary period.

Likewise, this Court agrees with respondent that petitioner is indeed guilty of forum shopping.

In *First Philippine International Bank v. Court of Appeals*[2] *the* Supreme Court explained that 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. Thus, there is forum-shopping when, between an action pending before this Court and another one, there exist: "a) identity of parties, or at least such parties as represent the same interests in both actions, b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and c) the identity of the two preceding particulars is such that any judgement rendered in the other action, will, regardless of which party is successful amount to *res judicata* in the action under consideration; said requisites also constitutive of the requisites for *auter action pendant or lis pendens.*" Another case elucidates the consequence of forum-shopping: "[W]here a litigant sues the same party against whom another action or actions for the alleged violation of the same

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[2] G.R. No. 115849, January 24, 1996.

right and the enforcement of the same relief is/are still pending, the defense of *litis pendentia* in one case is a bar to the others; and, a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the rest."[3]

A comparison of the above-captioned case with the other three pending cases shows the following:

	Parties	Nature of Petition	Reliefs Sought
CTA CASE NO. 7707	PTT Philippines Trading Corporation vs. Commissioner of Customs and the Subic Bay Metropolitan Authority (The Petition for Review against respondent Subic Bay Metropolitan Authority was dismissed in this Court's Resolution dated March 28, 2008.)	This is a Petition for Review filed under Section 7(a)(4) of R.A. 1125, as amended by R.A. 9282, in relation to Sections 2402 and 3611 of the Tariff and Customs Code, as amended, **assailing the November 7, 2007 Demand Letter of respondent Commissioner of Customs and the November 9, 2007 letter of respondent Subic Bay Metropolitan Authority**.	Judgment be rendered: (a) canceling and declaring null and void the assessment for and final demand for the payment of PhP4,236,530,193.00, of which said amount of PhP117,681,394.00 has been partially paid, leaving a net assessment of PhP4,118,848,799.00; (b) making permanent the temporary restraining order/writs of preliminary injunction against respondents; (c) directing respondent Commissioner to refund to petitioner the deposit of PhP117,681,394.00.
CTA CASE NO. 7981	PTT Philippines Trading Corporation vs. Commissioner of Customs	This is a Petition for Review filed under Section 7(a)(4) of R.A. 1125, as amended by R.A. 9282, in relation to Sections 2402 and 3611 of the Tariff and Customs Code, as amended, **assailing the November 7, 2007 Demand Letter of**	Judgment be rendered directing respondent Commissioner to refund to petitioner the amount of Php117,681,394.00, representing the

[3] Prubankers Association vs. Prudential Bank & Trust Co., G.R. No. 131247, January 25, 1999.

		respondent Commissioner of Customs and the November 9, 2007 letter of respondent Subic Bay Metropolitan Authority and claiming the refund to petitioner of the payment made under protest of PhP117,681,394.00.	erroneously paid taxes and customs duties.
CTA CASE NO. 8002	PTT Philippines Trading Corporation vs. Commissioner of Customs and Commissioner of Internal Revenue	This is a Petition for Review filed under Section 7(a)(4) of R.A. 1125, as amended by R.A. 9282, in relation to Sections 2402 and 3611 of the Tariff and Customs Code, as amended, **assailing the November 7, 2007 Demand Letter of respondent Commissioner of Customs and the November 9, 2007 letter of respondent Subic Bay Metropolitan Authority** and claiming the refund to petitioner of the payment made under protest of PhP176,522,091.50.	Judgment be rendered directing respondent Commissioner to refund to petitioner the amount of Php176,522,091.50, representing the erroneously paid taxes and customs duties.
CTA CASE NO. 8023	PTT Philippines Trading Corporation vs. Commissioner of Customs and Commissioner of Internal Revenue	This is a Petition for Review filed under Section 7(a)(4) of R.A. 1125, as amended by R.A. 9282, in relation to Sections 2402 and 3611 of the Tariff and Customs Code, as amended, **assailing the November 7, 2007 Demand Letter of respondent Commissioner of Customs and the November 9, 2007 letter of respondent Subic Bay Metropolitan Authority** and claiming the refund to petitioner of the payment made under protest of PhP176,522,091.50.	Judgment be rendered directing respondent Commissioner to refund to petitioner the amount of Php176,522,091.50, representing the erroneously paid taxes and customs duties.

As shown above, the three requisites constituting *res judicata* are present.

First, there is identity of parties as the four petitions involve PTT Philippines Trading Corporation as petitioner and Commissioner of Customs as respondent. Respondent Commissioner of Internal Revenue was merely impleaded as respondent in CTA Case Nos. 7707, 7981 and 8002, but there was no allegation that establishes petitioner's cause of action against her.

Second, the four petitions commonly assail the Demand Letter of respondent Commissioner of Customs dated November 7, 2007 and the Letter of Subic Bay Metropolitan Authority dated November 9, 2007. In deciding whether to grant petitioner's prayers in each petition, this Court must determine whether the November 7, 2007 Demand Letter is valid and whether petitioner is liable to pay deficiency duties and taxes.

Third, petitioner raised five grounds in the four petitions, which are the same and similarly worded when compared. Hence, there is no doubt that whatever judgment this Court may render in one petition would, regardless of which party is successful, amounts to *res judicata* in the other.

Considering the foregoing, this Court hereby finds that the instant Petition for Review was filed out of time and petitioner is guilty of forum shopping.

WHEREFORE, premises considered, respondent Commissioner of Customs' "**Motion to Dismiss**" is hereby **GRANTED** and the instant "**Petition for Review**" is hereby **DISMISSED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice