REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CUSTOMS,
Petitioner,

-versus-

HERMA SHIPPING AND TRANSPORT CORPORATION,
Respondent.

CTA *EB* CASE NO. 2556
(CTA Case No. 9561)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:
MAR 24 2022 4:20 pm

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RESOLUTION

On November 16, 2021,[1] petitioner Commissioner of Customs received a copy of the Resolution of the Court in Division (Third Division) dated September 29, 2021, denying his Motion for Reconsideration.[2]

On December 2, 2021,[3] petitioner filed by registered mail his Motion for Extension of Time to File Petition for Review (Motion), which the Court received on February 17, 2022, praying for an additional period of fifteen (15) days from December 1, 2021, or until December 16, 2021, within which to file his Petition for Review.

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[1] Par. 6 of the Petition for Review, Docket, p. 2
[2] Relative to the Decision dated July 17, 2020
[3] Affidavit of Service attached to the Motion for Extension of Time to File Petition for Review dated November 25, 2021

On December 17, 2021, petitioner filed his Petition for Review dated December 3, 2021, and paid the Sheriff's Trust Fund.

Appurtenant thereto, Sections 1, 3(b), and 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provide as follows:

> "SEC. 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (n)
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> SEC. 3. *Who may appeal; period to file petition.* – xxx
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> (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. xxx
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> SEC. 4. *Where to appeal; mode of appeal.* – xxx
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> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The *Court en banc* shall act on the appeal." (Emphasis supplied)

Pursuant to the above provisions, the aggrieved party may appeal to the Court *En Banc* by filing a petition for review within 15 days from receipt of the questioned decision or resolution.[4] Moreover, the Court *En Banc* may grant an extension of 15 days to file the said petition upon proper motion and payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the stated reglementary period.

Based on the foregoing, petitioner, in this case, had fifteen (15) days from November 16, 2021, or **until December 1, 2021**, within which to file his petition or his

[4] Under Rule 43 of the 1997 Rules of Civil Procedure (as amended)

motion for an extension to file the same, as the case may be. Assuming the Court grants his motion, he has 15 days counted from December 1, 2021, or **until December 16, 2021**, to file his petition.

Unfortunately, petitioner filed his Motion only on **December 2, 2021**, or one (1) day late. Thus, "there was no more period to extend"[5] when the said Motion was filed.

Moreover, petitioner only filed his Petition for Review and paid the Sheriff Trust Fund[6] on **December 17, 2021**. It bears to note that in his Motion, petitioner specifically prayed for an extension of fifteen (15) days from December 1, 2021, or until December 16, 2021, to file his petition. Nonetheless, he filed it only on December 17, 2021.

In addition, this Court notes that the Verification and Certification Against Forum Shopping attached to the petition is not duly notarized as it does not bear the notary public's signature.

In *Philippine National Bank vs. Deang Marketing Corporation and Berlita Deang (PNB case)*,[7] wherein petitioner's motion for extension of time to file an answer was laden with glaring lapses, the Supreme Court has this to say:

> "It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended. The court's discretion to grant a motion for an extension is conditioned upon such motion's timeliness, the passing of which renders the court powerless to entertain or grant it. Since the motion for extension was filed after the lapse of the prescribed period, there was no more period to extend.

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[5] PNB vs. Deang Marketing Corporation and Berlita Deang, G.R. No. 177931, December 8, 2008

[6] RULES OF COURT, Rule 141 LEGAL FEES

Sec. 22. Government exempt. -- The Republic of the Philippines, its agencies and instrumentalities are exempt from paying the legal fees provided in the rule. Local governments and government-owned or controlled corporations with or without independent charters are not exempt from paying such fees.

However, all court actions, criminal or civil, instituted at the instance of the provincial, city or municipal treasurer or assessor under Sec. 280 of the Local Government Code of 1991 shall be exempt from the payment of court and sheriff's fees.

[7] G.R. No. 177931, December 8, 2008

> Petitioner was not candid enough to aver in the Motion for Extension that the period had lapsed, as it still toyed with the idea that it could get away with it. The allegations therein were crafted as if the said motion was timely filed. Notably, the May 16, 2006 Order expressed no inkling that the motion was filed out of time. The trial court either was deceived by or it casually disregarded the apparent falsity foisted by petitioner. Lest this Court be similarly deceived, it is imperative to carefully examine the facts." (Emphasis supplied)

Similar to the *PNB case*, petitioner was not candid enough to disclose in his petition that his Motion was one (1) day late. To make matters worse, petitioner knew that the subject Motion was filed only on December 2, 2021, and the instant petition on December 17, 2021, yet he still alleged in his petition that:

> "7. On 01 December 2021, the petitioner filed a Motion for Extension, praying for an additional period of fifteen (15) days, or until 16 December 2021, to file the instant petition.
>
> 8. Therefore, the instant filing is well within the period prayed for." (Emphasis supplied)

In the case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*,[8] the Supreme Court held that "perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also **jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case."

The Supreme Court emphasized that "it is the responsibility of the counsel to check and keep track of the period of time left to file an appeal. He cannot escape from the inflexible observance of this rule which is jurisdictional. The rules, particularly on the statutory requirement for perfecting an appeal within the reglementary period provided, must be strictly followed. If an appeal is not taken within the period prescribed thereof, the judgment becomes final and the court loses all jurisdiction over the case."[9]

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[8] G.R. No. 167606, August 11, 2010
[9] *Id.*

WHEREFORE, premises considered, the Motion for Extension of Time to File Petition for Review is **DENIED** for having been filed out of time, and the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice