REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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

-versus-

HON. DISTRICT COLLECTOR OF CUSTOMS, Port of Manila Intl. Container Port (MICP) S Access Road, North Harbor, Port Area, Tondo, Manila
and
HON. COMMISSIONER OF CUSTOMS, Ground Floor, OCOM Building, 16th Street, South Harbor, Port Area, Manila
Respondents.

CTA *EB* NO. 2679
(CTA Case No. 10769)

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

Promulgated:
DEC 13 2023 3:42pm

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RESOLUTION

On January 26, 2023, the Court ordered petitioner to submit the following:

1. Legible duplicate original or certified true copy of the assailed *Resolution* dated March 25, 2022;

2. Affidavit of Service as proof of proper service by ordinary mail;

3. The original or certified true copy of the subject "MILLIONSTAR GRAINS CORP. CORPORATE SECRETARY'S CERTIFICATE OF BOARD RESOLUTION PRESENTATION/ APPROVAL/ADOPTION dated August 15, 2022; and

4. Entry of Appearance of its Counsel.

On March 9, 2023, petitioner, through its President, filed a *Manifestation* stating that its counsel, Atty. Camille S. Palma has tendered her withdrawal of appearance in the instant case. Petitioner requested ample time to be able to find another counsel.

On May 4, 2023, the Court noted petitioner's *Manifestation* and gave petitioner thirty (30) days to comply with the Court's *Resolution* dated January 26, 2023, and to submit the Entry of Appearance of its new counsel.

However, *Records Verification* dated July 13, 2023 reveals that petitioner failed to timely comply with the Court's *Resolution* dated May 4, 2023 in relation to the *Resolution* dated January 26, 2023. Accordingly, petitioner has not yet complied with the *Resolution* of the Court dated January 26, 2023.

On August 16, 2023, the Court received an *Entry of Appearance* filed by petitioner's counsel, which the Court noted in a *Minute Resolution* dated August 24, 2023. Other than the Entry of Appearance, no other submission was made by petitioner that will comply with the Court's Resolution dated January 26, 2023.

Considering the foregoing, We resolve to **DISMISS** the instant *Petition.*

Section 7, Rule 43 of the Revised Rules of Court, as amended, provides for the *dismissal of the case* for failure to comply with certain requirements, *viz.*:

> *SECTION 7. Effect of failure to comply with requirements.* — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, **proof of service of the petition**, and the contents of and **the documents which should accompany the**

> **petition** shall be sufficient **<u>ground for the dismissal</u>** thereof. [*Emphasis supplied*]

Moreover, Section 3, Rule 17 of the Revised Rules of Court, as amended, provides for the *dismissal of the case* for failure to prosecute as follows:

> *SECTION 3. Dismissal Due to Fault of Plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his or her evidence in chief on the complaint, or **<u>to prosecute his or her action for an unreasonable length of time</u>**, or to **<u>comply with these Rules or any order of the court</u>**, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his or her counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. [*Emphases and underscoring supplied.*]

In *Heirs of Sanchez v. Abrantes*,[1] the Supreme Court said that "the fundamental test for "failure to prosecute" contemplates want of due diligence attributable to the plaintiff in failing to proceed with reasonable promptitude." Accordingly, there must be an unwillingness on the part of the plaintiff to prosecute, as manifested by any of the following instances: (1) plaintiff fails to appear at the time of trial, or (2) plaintiff fails to prosecute the action for an unreasonable length of time; or (3) plaintiff fails to comply with the Rules of Court or any order of the court.

Here, petitioner was directed to submit to the Court a legible duplicate original or certified true copy of the assailed *Resolution* dated March 25, 2022, and the Affidavit of Service, among other documents, in the Court's *Resolution* dated January 26, 2023. To this date, petitioner has unreasonably failed to comply with the Court's directive.

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[1] G.R. No. 234999, August 4, 2021.

Petitioner's failure to submit the subject documents to this Court renders the instant *Petition for Review* fatally infirm under Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals ("**RRCTA**")[2] in relation to Sections 6[3] and 7[4], Rule 43 of the Revised Rules of Court.

We further note that in the Court's *Resolution* dated May 4, 2023, petitioner was given 30 days to comply with the Court's *Resolution* dated January 26, 2023, and to submit the *Entry of Appearance* of its new counsel. It was only on August 16, 2023, that petitioner complied with said *Resolution*.

Petitioner's failure to prosecute its action for an unreasonable length of time and to comply with the Rules and the above-mentioned orders of this Court warrants the dismissal of the instant case.

Given the foregoing disquisition, the dismissal of the present case is in order.

WHEREFORE, in light of the foregoing, petitioner's *Petition for Review* is **DISMISSED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] SECTION 2. Petition for Review; Contents. — The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court. **A clearly legible duplicate original or certified true copy' of the decision appealed from shall be attached to the petition.**

[3] SECTION 6. Contents of the petition. — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

[4] SECTION 7. Effect of failure to comply with requirements. — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition **shall be sufficient ground for the dismissal thereof**. [*Emphasis and underscoring supplied.*]

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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
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice