

## THIRD DIVISION

[ G.R. Nos. 203138-40, February 15, 2021 ]

### COMMISSIONER OF CUSTOMS, PETITIONER, VS. PTT PHILIPPINES TRADING CORPORATION, RESPONDENT.

#### D E C I S I O N

**HERNANDO, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> assail the April 17, 2012<sup>[2]</sup> and July 13, 2012<sup>[3]</sup> Resolutions of the Court of Tax Appeals En Banc (CTA-EB) in CTA EB Case Nos. 711, 714 and 719 which found in favor of respondent PTT Philippines Trading Corporation (PTTPTC).

#### **Factual Antecedents:**

A Special Audit Team (Audit Team) was formed pursuant to Mission Order No. 018-2006<sup>[4]</sup> issued by the Bureau of Customs (BoC) to conduct an audit on the import shipments and inventory of all sale transactions of PTTPTC.<sup>[5]</sup>

In its Initial Audit Findings<sup>[6]</sup> dated July 2, 2007, the Audit Team declared PTTPTC to have mislabeled some of its imported fuel to make it eligible to avail of special tax benefits. The Audit Team found the firm liable to pay Four Billion Two Hundred Thirty-Six Million, Five Hundred Thirty Thousand and One Hundred Ninety-Three Pesos (P4,236,530,193.00) representing assessed Customs Duties, Value Added Tax and Penalties.

On July 31, 2007, then Commissioner Napoleon Morales (Commissioner Morales) of the BoC sent a demand letter to PTTPTC to settle its P4,236,530,193.00 outstanding obligation within seven (7) days from notice.<sup>[7]</sup>

On August 3, 2007, PTTPTC, through counsel, sent a letter to Commissioner Morales, asking for reconsideration or reinvestigation of the Audit Team's conclusion and recommendation.<sup>[8]</sup>

On October 1, 2007, PTTPTC tendered, under protest, to the BoC the amount of P117,681,394.00 as partial payment of its obligation.<sup>[9]</sup>

On November 7, 2007, a Demand Letter<sup>[10]</sup> was sent to PTTPTC to settle its discrepancy assessment of basic duties and taxes amounting to P470,725,577.00 and its corresponding penalty in the amount of P3,765,804,616.00 until November 15, 2007.

On November 20, 2007, PTTPTC filed with the CTA Second Division a Petition for

Review<sup>[11]</sup> docketed as **CTA Case No. 7707** assailing, among others, the validity of the P4,236,530,193.00 assessment and the final demand letter dated November 7, 2007.

It paid the BoC the amount of P176,522,091.50<sup>[12]</sup> on November 29, 2007 and another P176,522,091.50<sup>[13]</sup> on December 18, 2007, with the total of both payments amounting to its assessment balance.

On September 30, 2009, it filed **CTA Case No. 7981** praying for the refund of the P117,681,394.00 it paid under protest.<sup>[14]</sup>

On December 1, 2009, PTTPTC instituted **CTA Case No. 8002** before the CTA First Division asking for the refund of the P176,522,091.50 it paid on November 29, 2007.<sup>[15]</sup>

On January 8, 2010, petitioner moved to dismiss CTA Case No. 7707 on the ground of *litis pendentia* citing the pendency of CTA Case Nos. 7981 and 8002.<sup>[16]</sup>

On January 13, 2010, PTTPTC commenced another Petition for Review,<sup>[17]</sup> docketed as **CTA Case No. 8023**, praying for the refund of the amount of P176,522,091.50 it paid on December 18, 2007. The same was raffled to the Third Division of the CTA.

On February 22, 2010, petitioner filed a Motion to Dismiss CTA Case No. 8002 on the ground of lack of jurisdiction. The Commissioner alleged that the November 7, 2007 demand letter on which the refund of the amount of P176,522,091.50 was based already attained finality since the petition for review was filed beyond 30-day period to file a protest under Section 11 of Republic Act No. 1125 (RA 1125), as amended by RA 9282.<sup>[18]</sup> In addition, petitioner attributed forum shopping on the part of PTTPTC due to the pendency of CTA Case Nos. 7707, 7981 and 8023.<sup>[19]</sup>

On April 7, 2010, petitioner moved to dismiss CTA Case No. 8023 raising the same grounds it averred in CTA Case No. 8002.<sup>[20]</sup>

On April 15, 2010, the CTA Second Division issued a Resolution in CTA Case No. 7707 which held that although *res judicata* may be present, CTA Case No. 7707 is the proper vehicle in litigating the case between the parties, being the first action filed questioning the deficiency assessment and the final demand letter. The Motion to Dismiss was therefore denied.<sup>[21]</sup> Petitioner filed a Motion for Reconsideration reiterating that PTTPTC is guilty of forum shopping in filing four petitions for review questioning the same November 7, 2007 demand letter.

On July 13, 2010, the CTA First Division issued a Resolution in CTA Case No. 8002 granting the Motion to Dismiss filed by the petitioner based on lack of jurisdiction after finding that the period to file a protest had already lapsed.<sup>[22]</sup> PTTPTC filed a Motion for Reconsideration.

On August 26, 2010, the CTA Second Division issued a Resolution in CTA Case No. 7707 granting the Motion for Reconsideration filed by the petitioner and dismissing the Petition for Review filed by PTTPTC on the ground of forum shopping<sup>[23]</sup> PTTPTC

likewise filed a Motion for Reconsideration thereon.

On August 31, 2010, the CTA Third Division resolved to grant the Motion to Dismiss in CTA Case No. 8023 on the ground of lack of jurisdiction and forum shopping.<sup>[24]</sup> PTTPTC also lodged a motion for reconsideration thereon.

On December 8, 2010, the CTA Second Division in CTA Case No. 7707 denied PTTPTC's Motion for Reconsideration.<sup>[25]</sup>

On December 16, 2010, the CTA First Division in CTA Case No. 8002 denied PTTPTC's Motion for Reconsideration.<sup>[26]</sup>

On January 10, 2011, CTA Third Division in CTA Case No. 8023 denied PTTPTC's Motion for Reconsideration.<sup>[27]</sup>

For clarity, the petitions filed by PTTPTC are illustrated below as follows:

Case No.	CTA Division	Date Filed	Relief Prayed For	Grounds Raised in Motion to Dismiss
7707	Second	Nov. 20, 2007	Cancellation of the <i>Litis Pendentia</i> citing P4,236,530,193.00 Assessment the pendency of CTA contained in Demand Letter dated Case Nos. 7981 and November 7, 2007 and Refund of 8002. P117,681,394.00 paid on October 1, 2007	
7981		Sept. 30, 2009	Refund of P117,681,394.00	<i>Not Indicated on the Records</i>
8002	First	Dec. 1, 2009	Refund of P176,522,091.50 paid on November 29, 2007	Lack of Jurisdiction and Forum Shopping
8023	Third	Jan. 13, 2010	Refund of P176,522,091.50 paid on December 18, 2007	Lack of Jurisdiction and Forum Shopping

Case No.	CTA Ruling	MR Filed	Ruling on MR	MR Filed	Ruling on MR
7707	Motion to Dismiss Denied	Commissioner of Customs filed an MR	MR Granted. CTA Case No. 7707 dismissed based on Forum Shopping	PTTPTC filed an MR	MR Denied
7981	XXX	XXX	XXX	XXX	XXX
8002	Motion to Dismiss Granted based on lack of jurisdiction	PTTPTC filed an MR	MR Denied	XXX	XXX
8023	Motion to Dismiss Granted based on lack of	PTTPTC filed a MR	MR Denied	XXX	XXX

PTTPTC filed three separate petitions for review before the CTA-EB docketed as CTA EB Case No. 711 (CTA Case No. 7707),<sup>[28]</sup> CTA EB Case No. 714 (CTA Case No. 8002)<sup>[29]</sup> and CTA EB Case No. 719 (CTA Case No. 8023).<sup>[30]</sup> In a Resolution dated July 20, 2011, the three petitions were consolidated.<sup>[31]</sup>

In a Resolution dated April 17, 2012, the CTA-EB reversed the questioned resolutions of its three divisions and reinstated CTA Case Nos. 7707, 8002 and 8023, the *fallo* of which states:

WHEREFORE, the Court En Banc hereby ORDERS for the REVERSAL and SETTING ASIDE of the following:

- a. The Resolutions promulgated by the Second Division of the Court on August 26, 2010, and December 8, 2010 in CTA Case No. 7707;
- b. The Resolutions promulgated by the First Division of the Court on July 13, 2010, and December 16, 2010 in CTA Case No. 8002;
- c. The Resolutions promulgated by the Third Division of the Court on August 31, 2010, and January 10, 2011 in CTA Case No. 8023.

Accordingly, to REINSTATE the Petitions for Review in CTA Case No. 7707, CTA Case No. 8002, and CTA Case No. 8023. Therefore, the Court En Banc ORDERS for the REMAND of the said cases to the Third Division of this Court. CTA Case No, 7707, 8002 and 8023 are to be CONSOLIDATED and tried accordingly.

SO ORDERED.<sup>[32]</sup>

Petitioner filed a Motion for Reconsideration but it was denied in a Resolution dated July 13, 2012.<sup>[33]</sup>

Hence, this petition.

### **Issues**

Petitioner raises the following issues, to wit:

- I. The CTA has no jurisdiction over the CTA Case Nos. 8002 and 8023; hence, the CTA En Banc acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in reinstating and remanding subject petitions for review for further proceedings.
- II. The CTA En Banc committed serious error and acted with grave abuse of discretion amounting to lack or excess of jurisdiction in reinstating and remanding CTA Case Nos. 7707, 8002 and 8023 despite respondent's glaring act of intentional forum shopping.<sup>[34]</sup>

Petitioner argues that CTA Case Nos. 7707, 8002 and 8023 are dismissible on the ground of forum shopping since all three cases similarly assail the validity of the November 7, 2007 demand letter from the BoC. The petitioner alleges that the prayer for refund in CTA Case Nos. 8002 and 8023 did not alter the cause of action of PTTPTC since the issue of refund is dependent on the resolution of the legality of the November 7, 2007 demand letter.

Assuming *arguendo* that the filing of the three Petitions for Review cannot be considered as forum shopping, CTA Case Nos. 8002 and 8023 should still be dismissed for lack of jurisdiction of the CTAt to hear both cases. Petitioner argues that CTA Case Nos. 8002 and 8023 were both filed beyond the 30-day period to protest the November 7, 2007 demand letter.

Even if both cases are to be treated as claims for refund of erroneously paid taxes and duties instead of a protest of assessment, they should be dismissed since the CTA has no jurisdiction over actions questioning the ruling of the Commissioner of Customs under RA 9262.

### **Our Ruling**

The petition is without merit.

Forum shopping can be committed in three ways, to wit:

- (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*);
- (2) filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (*res judicata*); or
- (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

Forum shopping exists when a party repeatedly avails himself of several judicial remedies in different courts, either simultaneously or successively, all of which are substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.<sup>[36]</sup>

Hence, to constitute forum shopping, the following elements must be present:

- (a) identity of parties, or at least such parties as represent the same interests in both actions;
- (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and
- (c) the identity of the two preceding particulars, such that any judgment