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EN BANC

[G.R. No. 199422, June 21, 2016]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. KEPCO ILIJAN CORPORATION, RESPONDENT.

D E C I S I O N

PERALTA, J.:

This is a petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Resolutions[1] dated July 27, 2011[2] and November 15, 2011[3] of the Court of Tax Appeals (CTA) *En Banc*.

The facts follow.

For the first[4] and second[5] quarters of the calendar year 2000, respondent filed its Quarterly value-added tax (*VAT*) returns with the Bureau of Internal Revenue (*BIR*). It also filed the Application for Zero Rated Sales for calendar year 2000 which was duly approved by the BIR.[6]

Thereafter, respondent filed with the BIR its claim for refund in the amount, of P449,569,448.73 representing input tax incurred for the first and second quarters of the calendar year 2000 from its importation and domestic purchases of capital goods and services preparatory to its production and sales of electricity to the National Power Corporation.[7]

Petitioner did not act upon respondent's claim for refund or issuance of tax credit certificate for the first and second quarters of the calendar year 2000. Consequently, respondent filed a Petition for Review[8] on March 21, 2002, and an Amended Petition for Review[9] on September 12, 2003.

In her Answer,[10] petitioner alleged the following Special and Affirmative Defenses: (1) respondent is not entitled to the refund of the amounts prayed for; (2) the petition was prematurely filed for respondent's failure to exhaust administrative remedies; (3) respondent failed to show that the taxes paid were erroneously or illegally collected; and (4) respondent has no cause of action.

After the issues were joined, trial on the merits ensued.

Respondent, thereafter, filed its Memorandum on September 1, 2008. For failure of petitioner to file the required Memorandum despite notice, the CTA First Division issued a Resolution[11] dated September 12, 2008 submitting the case for decision.

On September 11, 2009, the CTA First Division rendered a Decision,[12] the dispositive portion[13] of which reads as follows:

> IN VIEW OF THE FOREGOING, THIS Court finds petitioner entitled to a refund in the amount.of P443,447,184.50, representing unutilized input VAT paid on its domestic purchases and importation of capital goods for the first and second quarters of 2000, as computed below:

Amount of Input VAT Claim		P449,569,448.73
Less:	Input VAT Pertaining to Non-Capital Goods	706,328.22
Input VAT Claim Pertaining to Capital Goods Purchases		P448,863,120.51
Less:	Not Properly Substantiated Input VAT	
	Per ICPA's Findings	45,878.55
	Per this Court's Further Verification	5,370,057.46
Refundable Input VAT on Capital Goods Purchases		**P443,447,184.50**

There being no motion for reconsideration filed by the petitioner, the abovementioned decision became final and executory and a corresponding Entry of Judgment was issued on October 10, 2009. Thus, on February 16, 2010, the Court issued a Writ of Exeeution,[14] the pertinent portion of which reads as follows:

> You are hereby ORDERED to REFUND in favor of the petitioner KEPCO ILIJAN CORPORATION, the amount of P443,447,184.50 representing unutilized input VAT paid on its domestic purchases and importation of capital goods for the first and second quarters of 2000, pursuant to the Decision of this Court, promulgated on September 11, 2009, which has become final and executory on October 10, 2009, by virtue of the Entry of Judgment issued on said date.
>
> The Sheriff of this Court is hereby directed to see to it that this Writ is carried out by. the Respondent and/or his agents, and shall make the corresponding return/report thereon within thirty (30) days after receipt of the Writ.
>
> SO ORDERED.

Petitioner alleges that she learned only of the Decision and the subsequent issuance of the writ of March 7, 2011 when the Office of the Deputy Commissioner for Legal and Inspection Group received a Memorandum from the Appellate Division of the National Office recommending the issuance of a Tax Credit Certificate in favor of the respondent in the amount of P443,447,184.50.

Accordingly, on April 11, 2011 petitioner filed a petition for annulment of judgment with the CTA *En Banc*, praying for the following reliefs: (1) that the Decision dated September 11, 2009 of the CTA First Division in CTA Case No. 6412 be annulled and set aside; (2) that the Entry of Judgment on October 10, 2009 and Writ of Execution on February 16, 2010 be nullified; and (3) that the CTA First Division be directed to

re-open CIA Case No. 6412 to allow petitioner to submit her memoranda setting forth her substantial legal defenses.

In opposition, respondent filed its Motion to Deny Due Course (To The Petition for Annulment of Judgment), arguing, among others, that petitioner is not lawfully entitled to the annulment of judgment on the ground that the CTA *En Banc* is bereft of jurisdiction to entertain annulment of judgments on the premise that the Rules of Court, Republic Act No. (*RA No.*) 9282,[15] and the Revised Rules'of the. Court of Tax Appeals do not expressly provide a remedy on annulment of judgments.

On July 27, 2011, the CTA *En Banc* issueda Resolution[16] dismissing the petition. Petitioner filed a motion for reconsideration, but the same was denied in a Resolution[17] dated November 15, 2011.

Hence, this petition.

Petitioner raises the following arguments to support her petition:

I

THE COURT OF TAX APPEALS (EN BANC) HAS JURISDICTION TO TAKE COGNIZANCE OF THE PETITION FOR ANNULMENT OF JUDGMENT.

II

THE NEGLIGENCE COMMITTED BY PETITIONER'S COUNSEL IS GROSS, PALPABLE AND CONSTITUTES TOTAL ABANDONMENT OF PETITIONER'S CAUSE WHICH IS TANTAMOUNT TO EXTRINSIC FRAUD.

III

THE COURT OF TAX APPEALS (*FIRST DIVISION*) HAS NO JURISDICTION OVER THE ORIGINAL PETITION FILED BY RESPONDENT.

IV

PETITIONER IS NOT BARRED BY LACHES FROM ASSAILING THE JURISDICTION OF THE COURT OF TAX APPEALS (*FIRST DIVISION*) OVER THE PETITION FILED BY RESPONDENT.[18]

Prefatorily, we first pass upon the issue of whether the CTA *En Banc* has jurisdiction to take cognizance of the petition for annulment of judgment filed by petitioner.

Annulment of judgment, as provided for in Rule 47 of the Rules of Court, is based only on the grounds of extrinsic fraud and lack of jurisdiction. It is a recourse that presupposes the filing of a separate and original action for the purpose of annulling or avoiding a decision in another case. Annulment is a remedy in law independent of the case where the judgment sought to be annulled is rendered.[19] It is unlike a motion for reconsideration, appeal or even a petition for relief from judgment, because annulment is not a continuation or progression of the same case, as in fact the case it seeks to annul is already final and executory. Rather, it is an

extraordinary remedy that is equitable in character and is permitted only in exceptional cases.[20]

Annulment of judgment involves the exercise of original jurisdiction, as expressly conferred on the Court of Appeals by Batas Pambansa Bilang (*BP Blg.*) 129, Section 9(2). It also implies power by a superior court over a subordinate one, as provided for in Rule 47 of the Rules of Court, wherein the appellate court may annul a decision of the regional trial court, or the latter court may annul a decision of the municipal or metropolitan trial court.

But the law and the rules are silent when it comes to a situation similar to the case at bar, in which a court, in this case the Court of Tax Appeals, is called upon to annul its own judgment. More specifically, in the case at bar, the CTA sitting *en banc* is being asked to annul a decision of one of its divisions. However, the laws creating the CTA and expanding its jurisdiction (RA Nos. 1125 and 9282) and the court's own rules of procedure (the Revised Rules of the CTA) do not provide for such a scenario.

It is the same situation among other collegial courts. To illustrate, the Supreme Court or the Court of Appeals may sit and acjjudicate cases in divisions consisting of only a number of members, and such adjudication is already regarded as the decision of the Court itself.[21] It is provided for in the Constitution, Article VIII, Section 4(1) and BP Blg. 129, Section 4, respectively. The divisions are not considered separate and distinct courts but are divisions of one and the same court; there is no hierarchy of courts within the Supreme Court and the Court of Appeals, for they each remain as one court notwithstanding that they also work in divisions. [22] The Supreme Court sitting *en banc* is not an appellate court vis-a-vis its divisions, and it exercises no appellate jurisdiction over the latter.[23] As for the Court of Appeals *en banc*, it sits as such only for the purpose of exercising administrative, ceremonial, or other non-adjudicator/functions.[24]

Thus, it appears contrary to these features that a collegial court, sitting *en banc*, may be called upon to annul a decision of one of its divisions which had become final and executory, for it is tantamount to allowing a court to annul its own judgment and acknowledging that a hierarchy exists within such court. In the process, it also betrays the principle that judgments must, at some point, attain finality. A court that can revisit its own final judgments leaves the door open to possible endless reversals or modifications which is anathema to a stable legal system.

Thus, the Revised Rules of the CTA and even the Rules of Court which apply suppletorily thereto provide for no instance in which the *en banc* may reverse, annul or void a *final* decision of a division. Verily, the Revised Rules of the CTA provide for no instance of an annulment of judgment at all. On the other hand, the Rules of Court, through Rule 47, provides, with certain conditions, for annulment of judgment done by a superior court, like the Court of Appeals, against the final judgment, decision or ruling of an inferior court, which is the Regional Trial Court, based on the grounds of extrinsic' fraud and lack of jurisdiction. The Regional Trial Court, in turn, also is empowered to, upon a similar action, annul a judgment or ruling of the Metropolitan or Municipal Trial Courts within its territorial jurisdiction. But, again, the said Rules are silent as to whether a collegial court sitting *en banc* may annul a final judgment of its own division.

As earlier explained, the silence of the Rules may be attributed to the need to preserve the principles that there can be no hierarchy within a collegial court between its divisions and the *en banc*, and that a court's judgment, once final, is immutable.

A direct petition for annulment of a judgment of the CTA to the Supreme Court, meanwhile, is likewise unavailing, for the same reason that there is no identical remedy with the High Court to annul a final and executory judgment of the Court of Appeals. RA No. 9282, Section I puts the CTA on the same level as the Court of Appeals, so that .if the latter's final judgments may not be annulled before the Supreme Court, then the CTA's own decisions similarly may not be so annulled. And more importantly, it has been previously discussed that annulment of judgment is an original action, yet, it is not among the cases enumerated in the Constitution's Article VIII, Section 5 over which the Supreme Court exercises original jurisdiction. Annulment of judgment also often requires an adjudication of facts, a task that the Court loathes to perform, as it is not a trier of facts.[25]

Nevertheless, there will be extraordinary cases, when the interest of justice highly demands it, where final judgments of the Court of Appeals, the CTA or any other inferior court may still be vacated or subjected to the Supreme Court's modification, reversal, annulment or declaration as void. But it will be accomplished not through the same species of original action or petition for annulment as that found in Rule 47 of the Rules of Court, but through any of the actions over which the Supreme Court has original jurisdiction as specified in the Constitution, like 65 of the Rules of Court.

Hence, the next query is: Did the CTA *En Banc* correctly deny the petition for annulment of judgment filed by petitioner?

As earlier discussed, the petition designated as one for annulment of judgment (following Rule 47) was legally and procedurally infirm and, thus, was soundly dismissed by the CTA *En Banc* on such ground. Also, the CTA could not have treated the petition as an appeal or a continuation of the case before the CTA First Division because the latter's decision had become final and executory and, thus, no longer subject to an appeal.

Instead, what remained as a remedy for the petitioner was to file a petition for *certiorari* under Rule 65, which could have been filed as an original action before this Court and not before the CTA *En Banc*. *Certiorari* is available when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law, such as in the case at bar. Since the petition below invoked the gross and palpable negligence of petitioner's counsel which is allegedly tantamount to its being deprived of due process and its day in court as party-litigant[26] and, as it also invokes lack of jurisdiction of the CTA First Division to entertain the petition filed by private respondent since the same allegedly fails to comply with the reglementary periods for judicial rernedies involving administrative claims for refund of excess unutilized input VAT under the National Internal Revenue Code (*NIRC*),[27] which periods it claims to be jurisdictional, then the proper remedy that petitioner should have availed of was indeed a petition for *certiorari* under Rule 65, an original or independent action premised on the public respondent having acted without or in