

## SECOND DIVISION

[ G.R. No. 195320, April 23, 2018 ]

**BUREAU OF INTERNAL REVENUE, REPRESENTED BY THE COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. HON. ERNESTO D. ACOSTA, ET AL. OF THE SPECIAL FIRST DIVISION OF THE COURT OF TAX APPEALS AND CHEVRON PHILIPPINES, INC. (FORMERLY CALTEX PHILIPPINES, INC.), RESPONDENTS.**

### DECISION

**REYES, JR., J:**

Before this Court is a Petition for *Certiorari*<sup>[1]</sup> under Rule 65 of the Rules of Court assailing the Resolutions dated September 24, 2010<sup>[2]</sup> and December 3, 2010<sup>[3]</sup> promulgated by the Court of Tax Appeals-Special First Division (CTA-Special First Division), which considered the motion for reconsideration filed by the Bureau of Internal Revenue (BIR) as a mere scrap of paper and deemed the CTA-Special First Division's Decision<sup>[4]</sup> dated July 12, 2010 as final and executory.

### The Antecedent Facts

On October 7, 2004, Chevron Philippines, Inc. (Chevron) filed an administrative claim for refund or credit with the BIR under Claim No. 2004-XP-11/03. The claim in the aggregate amount of P131,175,480.18 represented alleged overpayment of excise taxes on imported finished unleaded premium gasoline and diesel fuel withdrawn from its refinery in San Pascual, Batangas for the month of November 2003.<sup>[5]</sup>

The BIR, however, did not act on Chevron's claim. Thus, on the basis of Section 7 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282,<sup>[6]</sup> Chevron elevated the case to the CTA-Special First Division on October 28, 2005 *via* a petition for review.<sup>[7]</sup>

On July 12, 2010, the CTA-Special First Division rendered its Decision<sup>[8]</sup> partly granting the petition. The dispositive portion of the decision reads:

**WHEREFORE**, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to refund to petitioner the reduced amount of ONE HUNDRED EIGHT MILLION FIVE HUNDRED EIGHTY-FIVE THOUSAND ONE HUNDRED) SIXTY-TWO PESOS and 95/100 (P108,585,162.95).

**SO ORDERED.**<sup>[9]</sup>

The BIR moved for the reconsideration of this Decision on August 3, 2010.<sup>[10]</sup>

On August 17, 2010, Chevron filed its Comment/Opposition<sup>[11]</sup> to the Motion for Reconsideration. Chevron asserted that the BIR's motion for reconsideration was a *pro forma* motion because the BIR failed to set the motion for hearing pursuant to Sections 3 and 6 of Rule 15 of the Revised Rules of the CTA.<sup>[12]</sup> Chevron further maintained that non-compliance with the notice of hearing requirement was a fatal defect that rendered its motion a mere scrap of paper. As such, it is not entitled to judicial cognizance and the filing of such defective motion did not toll the reglementary period to appeal.

The CTA-Special First Division, in the assailed Resolution<sup>[13]</sup> dated September 24, 2010, agreed with Chevron and denied the BIR's motion for reconsideration:

**WHEREFORE**, in view of the foregoing, respondent's Motion for Reconsideration, filed on August 3, 2010, is considered a mere scrap of paper. Accordingly, the said Motion is *pro forma*. Thus, the same will not merit the attention of this Court and will not toll the running of the period to appeal.

**SO ORDERED.**<sup>[14]</sup>

Unperturbed, the BIR once again moved for a reconsideration of the resolution, which the CTA-Special First Division denied with finality in its Resolution<sup>[15]</sup> dated December 3, 2010, *viz.*:

**WHEREFORE**, the instant Motion for Reconsideration is denied for lack of merit. The failure of respondent to file a correct motion for reconsideration did not toll the running of the reglementary period to appeal under the rules. The Decision promulgated on June 12, 2010 is hereby declared final and executory.

**SO ORDERED.**<sup>[16]</sup>

On December 8, 2010, the BIR received its copy of the Resolution dated December 3, 2010. The CTA-Special First Division, after having confirmed that the BIR did not elevate the issue before the CTA *En Banc* within the 15-day reglementary period to appeal, issued an Entry of Judgment.<sup>[17]</sup> On January 10, 2011, the BIR received a copy of the Entry of Judgment,<sup>[18]</sup> the pertinent portion of which reads:

This is to certify that on July 12, 2010, a decision rendered in this case was filed in this Office, the dispositive part of which reads as follows:

**WHEREFORE**, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to refund to petitioner the reduced amount of ONE HUNDRED EIGHT MILLION FIVE HUNDRED EIGHTY-FIVE THOUSAND ONE HUNDRED SIXTY-TWO PESOS and 95/100 (P108,585,162.95).

**SO ORDERED.**

And that the same has, on December 23, 2010, become final and executory and is hereby recorded in the Book of Entries of Judgment, x x x.<sup>[19]</sup>

On January 11, 2011, Chevron moved for the issuance of a Writ of Execution<sup>[20]</sup> of the CTA-Special First Division's Decision dated July 12, 2010.

In response, the BIR filed a Motion to Lift Entry of Judgment before the CTA-Special First Division on the ground that it intended to exhaust the remedy of filing a Petition for *Certiorari* before the Supreme Court under Rule 65 of the Revised Rules of Court.<sup>[21]</sup>

Hence, this petition for *certiorari*<sup>[22]</sup> filed by the BIR on February 7, 2011. The BIR alleged that the CTA-Special First Division committed grave abuse of discretion in rendering its Resolutions dated September 24, 2010<sup>[23]</sup> and December 3, 2010.<sup>[24]</sup> It argues that the CTA-Special First Division in accordance with jurisprudence should disregard technicalities and allowed the motion despite the lack of notice of hearing in order to resolve the case meritoriously.<sup>[25]</sup>

### **Issues**

Thus, the instant petition calls this Court to resolve two (2) issues:

1. Whether a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court is available as a remedy to the BIR; and
2. Whether the CTA-Special First Division gravely abused its discretion in declaring the motion for reconsideration filed by the BIR on October 14, 2010 to be a *pro forma* motion, and in rendering the Decision promulgated on July 12, 2010 final and executory.<sup>[26]</sup>

### **Ruling of the Court**

The petition is dismissed.

Time and again, this Court emphasized that the special civil action for *certiorari* is a limited form of review and a remedy of last recourse.<sup>[27]</sup> Section 1, Rule 65 of the Rules of Court provides that the special civil action of *certiorari* may only be invoked when there is no appeal, nor any plain, speedy and adequate remedy in the course of law.

A writ of *certiorari* is not a substitute for a lost appeal.<sup>[28]</sup> When an appeal is available, *certiorari* will not prosper especially if the appeal was lost because of one's own negligence or error in the choice of remedy, even if the ground is grave abuse of discretion.<sup>[29]</sup>

Under the Rules of Court, the remedy against a final judgment or order is an appeal. In *Pahila-Garrido v. Tortogo, et al.*,<sup>[30]</sup> the Court has held that a final judgment disposes of the subject matter in its entirety or terminates a particular proceeding or action. A final judgment or order leaves nothing more to be done except to enforce

by execution what the court has determined.<sup>[31]</sup>

For cases before the CTA, a decision rendered by a division of the CTA is appealable to the CTA *En Banc* as provided by Section 18 of R.A. No. 1125, as amended by R.A. No. 9282. It reads as follows:

**SEC. 18.** *Appeal to the Court of Tax Appeals En Banc.* - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *En Banc*.

Section 2 of Rule 4 of the Revised Rules of the CTA also states that the CTA *En Banc* has exclusive appellate jurisdiction relative to the review of the court divisions' decisions or resolutions on motion for reconsideration or new trial, in cases arising from administrative agencies such as the BIR.

**SEC. 2.** *Cases within the jurisdiction of the Court En Banc.* - The Court En Banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, x x x.

It must be stressed that the Resolution dated December 3, 2010 of the CTA-Special First Division which declared its Decision dated July 12, 2010 final and executory is a final judgment. It disposed of the case on the merits.

The main issue resolved by the CTA-Special First Division in the Decision dated July 12, 2010 was Chevron's entitlement to refund or credit because of its overpayment of excise taxes on imported finished unleaded premium gasoline and diesel fuel. In its decision, the CTA-Special First Division found sufficient basis for Chevron's claim and partially granted the petition. The BIR was ordered to refund One Hundred Eight Million Five Hundred Eighty-Five Thousand One Hundred Sixty-Two and Ninety-Five Centavos (P108,585,162.95), representing the excess excise tax paid for November 2003.

After the BIR's Motion for Reconsideration on the Decision dated July 12, 2010 was denied in the Resolution dated September 24, 2010 of the CTA-Special First Division, the BIR again filed a motion for the reconsideration of this resolution. Significantly, in its Resolution dated December 3, 2010, the CTA-Special First Division ruled on the merits of the motion and denied the BIR's argument as to the liberal application of the rules.