

SIXTH DIVISION

[CA-G.R. SP NO. 87977, August 18, 2006]

PACIFIC MILLS, INC., PETITIONER, VS. HON. ZENAIDA R. DAGUNA, PRESIDING JUDGE OF BR. 19 OF THE RTC OF MANILA, AND THE REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE BUREAU OF CUSTOMS, RESPONDENTS.

D E C I S I O N

TAGLE, J.:

This is a petition to annul and set aside the Orders dated April 11, 2003 and October 1, 2004 of the RTC, Branch 19, of Manila in Civil Case No. 02-102630, entitled "Republic of the Philippines, represented by the Bureau of Customs vs. Pacific Mills, Inc." The April 11, 2003 Order denied petitioner's motion to dismiss while the October 1, 2004 Order denied its motion for reconsideration of the first order. The instant petition assails the said orders for having been issued with grave abuse of discretion in violation and contravention of laws and existing jurisprudence.

THE FACTS.

Petitioner Pacific Mills, Inc. is a domestic corporation engaged in the manufacture of clothes since 1951 with plants at Quirino Highway, Balintawak, Quezon City. It imports its raw materials and supplies and therefore, pays taxes and duties on its importations.

A certain Arnold Velasco offered the transfer of Tax Credit Certificates (TCCs) to petitioner at the discounted rate of 18%. Said TCCs were issued by the Board of Investments (BOI) pursuant to Article 21 of Executive Order No. 266 or the Omnibus Investments Code.

After conducting a due diligence check, petitioner found the subject TCCs to be genuine. Thus, the transfer materialized and some of the TCC's issued to Filipino Way Industries, Integrated Multi-Cotton Mills, Inc. and Scope Industries, Inc. were assigned to petitioner which it used in payment of custom duties and taxes on its importations.

On November 30, 1997, a fire gutted the two buildings of petitioner including the equipment, machineries, raw material and finished products stored therein. As a consequence thereof, petitioner stopped its operations and closed shop. Its license, permits and registration from concerned government agencies were surrendered by it for cancellation.

Sometime in 2002, the Republic through the Bureau of Customs demanded the payment of around P32 Million from petitioner corresponding to unpaid taxes and duties. Petitioner, however, refused to pay, claiming that the same have already

been paid long ago with the TCCs.

In October 2002, the Republic represented by BOC filed a case against petitioner for collection of P32,477,050.00 representing taxes and duties it owes inasmuch as the TCCs used for the payment thereof turned out to be "fake and spurious". The case is docketed as Civil Case No. 02-102630 and pending before the RTC Br. 19 of Manila.

It appears that earlier, separate cases were filed by the Republic against Dragon Textile Mills, Inc. and Filysn Corporation before Branches 10 & 17 of the RTC of Manila involving also the collection of taxes and duties as the TCCs used in payment thereof were spurious. The defendants in said cases also acquired their TCCs from Filipino Way Industries, Integrated Multi-Cotton Mills & Scope Industries, Inc.

In the present complaint instituted by the Republic,, petitioner filed a motion to dismiss it on grounds of (1) violation of the rule against forum-shopping, (2) failure to state a cause of action and (3) failure to implead the transferors of the TCCs who are indispensable parties.

An Opposition was filed by the Republic, followed by the Reply of petitioner and finally, a Rejoinder by the Republic.

It is in this context that respondent judge issued the assailed orders denying petitioner's Motion to Dismiss.

Before the resolution of its motion to dismiss, petitioner filed an Answer Ad Cautelam reiterating as defenses that (a) the complaint failed to state a cause of action and/or premature; (b) plaintiff violated the rule against forum shopping and, (c) the claim in the complaint had been paid and extinguished.

Hence, the case was set for pre-trial conference. Due to the unavailability, however, of the respondent judge and the failure of the Republic to appear, petitioner filed the instant petition contending that:

I

RESPONDENT JUDGE ACTED ARBITRARILY AND CAPRICIOUSLY WHEN SHE DECLARED THAT THE REPUBLIC DID NOT COMMIT FORUM-SHOPPING.

II

RESPONDENT JUDGE GROSSLY ERRED AND IGNORED THE LAW AND JURISPRUDENCE IN RULING THAT THE COMPLAINT STATES A CAUSE OF ACTION.

II

RESPONDENT JUDGE FAILED TO APPLY THE SETTLED RULE THAT FAILURE TO IMPLEAD INDISPENSABLE PARTIES DEPRIVES THE COURT OF JURISDICTION.