AGFHA INCORPORATED, PETITIONER, VS. HON. COURT OF TAX APPEALS AND COMMISSIONER OF CUSTOMS, RESPONDENTS.

G.R. No. 172051. July 27, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On December 12, 1992, a shipment of bales of "text grey cloth" arrived at the Manila International Container Port. The shipment was later placed under a Hold Order, following which forfeiture proceedings were taken for alleged violation of Section 2530 (f) and (1) (3-5) of the Tariff and Customs Code.

Agfha Incorporated (petitioner), claiming to be the lawful owner of the shipment, filed a motion for intervention.

By Decision dated September 5, 1994, the District Collector of Customs ordered the forfeiture of the shipment in favor of the government, drawing petitioner to lodge an appeal to the Commissioner of Customs (respondent) who, however, denied the same.

Petitioner thereupon appealed to the Court of Tax Appeals (CTA) which, by Decision dated November 4, 1996, ruled in its favor. Thus the CTA disposed:

> WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby GRANTED. Accordingly, the decision of the respondent in Customs Case No. 94-017, dated August 25, 1995, affirming the decision of the MICP Collector, dated September 5, 1994, which decreed the forfeiture of the subject shipments in favor of the government, is hereby REVERSED and SET ASIDE. Respondent is hereby ORDERED to effect the immediate RELEASE of the subject shipment goods in favor of the petitioner. No costs.[1] (Underscoring supplied)

Respondent appealed to the Court of Appeals and then to this Court. In both instances, the decision of the CTA was affirmed. This Court's Decision of October 2, 2001 attained finality on February 5, 2002.[2]

On October 16, 2000, the Second Division of the CTA issued a writ of execution[3] directing respondent to effect the immediate release of the shipment to petitioner. The writ was not implemented, however.

Petitioner thus filed before the CTA a motion[4] for respondent to show cause why he should not be punished for contempt for defying the writ of execution.

In his Explanation with Motion for Clarification,[5] respondent sought guidance from the CTA since the writ of execution could no longer be carried out due to the "loss" of the shipment.

On April 14, 2004, petitioner filed before the CTA a motion to set case for hearing[6] to determine (1) whether petitioner's shipment was actually lost, and if so, the cause and/or circumstances attendant thereto; and (2) the amount respondent should pay petitioner should the shipment be found to have been actually lost.[7]

By Resolution[8] of May 17, 2005, the CTA found respondent liable for the loss of the shipment and ordered him to pay US$160,348.08. The dispositive portion of the resolution reads:

> WHEREFORE, premises considered, the Bureau of Customs is adjudged liable to petitioner AGFHA, INC. for the value of the subject shipment in the amount of ONE HUNDRED SIXTY THOUSAND THREE HUNDRED FORTY EIGHT AND 08/100 US DOLLARS (US$160,348.08). The Bureau of Custom's liability may be paid in Philippine Currency, computed at the exchange rate prevailing at the time of actual payment, with legal interests thereon at the rate of 6% per annum computed from February 1993 up to the finality of this Resolution. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum upon finality of this Resolution until the value of the subject shipment is fully paid.
>
> The payment shall be taken from the sale or sales of the goods or properties which were seized or forfeited by the Bureau of Customs in other cases.
>
> SO ORDERED.[9]

Both parties moved for partial reconsideration of the above resolution.

By Resolution[10] of October 18, 2005, the CTA modified its May 17, 2005 resolution, and ordered that the taxes and duties on the shipment be deducted from the amount recoverable by petitioner, viz:

> WHEREFORE, premises considered, respondent Commissioner of Customs' "Motion For Partial Reconsideration" is hereby PARTIALLY GRANTED. The Resolution dated May 17, 2005 is hereby MODIFIED but only insofar as the Court did not impose the payment of the proper duties and taxes on the subject shipment. Accordingly, the dispositive portion of Our Resolution, dated May 17, 2005, is hereby MODIFIED to read as follows:WHEREFORE, premises considered, the Bureau of Customs is adjudged liable to petitioner AGFHA, Inc. for the value of the subject shipment in the amount of ONE HUNDRED SIXTY THOUSAND THREE HUNDRED FORTY EIGHT and 08/100 US Dollars (US$160,348.08), subject, however, to the payment of the prescribed taxes and duties, at the time of the importation. The Bureau of Customs" liability may be paid in Philippine Currency, computed at the exchange rate prevailing at the time of actual payment, with legal interests thereon at the rate of 6% per annum computed from February 1993 up to the finality of this Resolution. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum upon finality of this Resolution until the value of the subject shipment is fully paid.
>
> The payment shall be taken from the sale or sales of the goods or properties which were seized or forfeited by the Bureau of Customs in other cases.
>
> SO ORDERED.

Petitioner AGFHA, Inc.'s "Motion For Partial Reconsideration" is hereby DENIED for lack of merit.

SO OREDERED.[11]

Petitioner filed a motion for partial reconsideration[12] of the October 18, 2005 Resolution which was denied by the CTA in its Resolution[13] dated February 3, 2006. Petitioner thereupon filed before this Court a petition for certiorari, docketed as G.R. No. 172051, alleging that:

> THE CTA COMMITTED MANIFEST ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK/EXCESS OF JURSIDICTION:
>
> I
>
> WHEN IT ORDERED PETITIONER TO PAY THE TAXES AND DUTIES ON ITS SHIPMENT WHICH PRIVATE RESPONDENT'S OFFICE ITSELF LOST THROUGH ITS OWN FAULT AND NEGLIGENCE;
>
> II
>
> WHEN IT REFUSED TO EXPUNGE PRIVATE RESPONDENT'S MOTION FOR PARTIAL

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RECONSIDERATION DATED 09 JUNE 2005 (Annex "Q", HEREOF) FOR NON-COMPLIANCE WITH SECTION 11, RULE 13 AND SECTIONS 4 AND 6, RULE 15 OF THE 1997 RULES OF CIVIL PROCEDURE; AND

III

IN RULING THAT THE 12% INTEREST ON THE VALUE OF PETITIONER'S LOST SHIPMENT, IMPOSED BY WAY OF DAMAGES, SHOULD BE COMPUTED FROM THE FINALITY OF ITS RESOLUTION DATED 17 MAY 2005 AND NOT FROM THE TIME THE SAID SHIPMENT WERE LOST.[14]

Meanwhile, respondent filed with the CTA en banc a petition for review[15] of the CTA October 18, 2005 Resolution, faulting the Second Division of the CTA in holding that:

- RESPONDENT IS ENTITLED TO BE PAID ONE HUNDRED SIXTY THOUSAND THREE HUNDRED FORTY EIGHT AND 08/100 US DOLLARS (US$160,348.08) PAYABLE IN PHILIPPINE CURRENCY, TO BE COMPUTED AT THE EXCHANGE RATE PREVAILING AT THE TIME OF ACTUAL PAYMENT.

- THE PAYMENT OF RESPONDENT'S CLAIMS SHALL BE TAKEN FROM THE SALE OR SALES OF THE GOODS OR PROPERTIES WHICH WERE SEIZED OR FORFEITED BY THE BUREAU OF CUSTOMS IN OTHER CASES.[16]

Petitioner, instead of filing its Comment to the petition for review, filed a motion to dismiss,[17] arguing that a petition for review is not the proper remedy to challenge interlocutory orders and/or orders of execution.

By Resolution[18] of April 24, 2006, the CTA en banc ruled that petitioner's motion to dismiss is an unauthorized pleading and was thus ordered expunged from the records. Petitioner filed a motion for reconsideration,[19] but it was denied by Resolution[20] of June 14, 2006, drawing petitioner to file a petition for certiorari before this Court, docketed as G.R. No. 173813, claiming that:

THE CTA EN BANC COMMITTED MANIFEST ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK/EXCESS OF JURISDICTION WHEN IT ENTERTAINED PUBLIC RESPONDENT'S APPEAL (Petition for Review) OVER AN ORDER OF EXECUTION.[21]

In the interest of speedy and orderly administration of justice and to avoid conflicting decisions or resolutions, this Court resolved to consolidate G.R. No. 173813 with G.R. No. 172051.[22]

On the procedural issue on the appropriateness of the remedy taken by the parties to assail the CTA October 18, 2005 Resolution:

Petitioner contends that the assailed resolution is an order of execution, hence, under Rule 41, Section 1 of the Rules of Court, to wit:

SECTION 1. Subject of Appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

x x x x

(f) An order of execution;

x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an

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> appropriate special civil action under Rule 65,

respondent should have challenged it via a special civil action for certiorari under Rule 65.

Petitioner further contends that Section 1, Rule 50 of the Rules which provides:

> SECTION 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or that of the appellee, on the following grounds:
>
> x x x x
>
> (i) The fact that the order or judgment appealed from is not appealable,

mandates the dismissal by the CTA of respondent's appeal.

Petitioner's contentions do not lie.

It is well settled that when, after judgment has been rendered and it has become final, facts and circumstances transpire which render its execution impossible or unjust, the interested party may ask for the modification or alteration of the judgment "to harmonize the same with justice and the facts."[23]

The loss of the shipment, owing to respondent's negligence, rendered impossible the enforcement of this Court's decision dated October 2, 2001 ordering respondent to release the shipment. The loss presented a supervening event warranting the modification of this Court's decision.[24]

Acting on the motion filed by petitioner for a determination of the amount respondent should pay on account of the loss of the shipment, the CTA issued the May 17, 2005 Resolution and the assailed resolution adjudging respondent liable for the commercial value thereof in the amount of US$160,348.08.

Contrary to petitioner's view, the assailed resolution is not an interlocutory order since it left nothing to be done by the CTA with respect to the merits of the case. It is a final judgment which fully disposed of the issue appurtenant to respondent's liability to petitioner on account of the loss of the shipment. Under Section 18 of Republic Act (R.A.) No. 1125,[25] as amended by R.A. No. 9282,[26] viz:

> Sec. 18. Appeal to the Court of Tax Appeals En Banc. - No civil proceedings involving matters arising from the National Internal Revenue 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. (Underscoring supplied),

a party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration may file an appeal to the CTA en banc. Likewise, Rule 8, Section 4, paragraph (b) of the Revised Rules of the CTA provides:

> SEC. 4. Where to appeal; mode of appeal. – x x x
>
> (b) Appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal. (Underscoring supplied)

Clearly, it was well within the CTA's power of review to entertain respondent's appeal. The present petition for certiorari, G.R. No. 173813, must thus be dismissed.

Respecting G.R. No. 172051, the same must be dismissed too on the ground that petitioner failed to show that it

has no plain, speedy and adequate remedy in the ordinary course of law against its perceived grievance. Appeal was not only available. It was a speedy and adequate remedy.

On the merits, petitioner raises the issue of whether the CTA erred in ordering petitioner to pay taxes and duties and in ruling that the interest should be computed from the finality of its May 17, 2005 Resolution. Even assuming that the findings of the CTA are incorrect, the error is not one of jurisdiction, but of law which is reviewable by timely appeal.

It bears stressing that the only issue in a petition for certiorari under Rule 65 is whether any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction.

Grave abuse of discretion generally refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty imposed by law or to act in contemplation of law or where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.

Simply because the CTA allegedly misapplied the law, no grave abuse of discretion may be attributed to it.

WHEREFORE, the consolidated petitions for certiorari, G.R. No. 173813 and G.R. No. 172051, are DISMISSED for lack of merit.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

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[1] Rollo (G.R. No. 172051), p. 90.

[2] Id. at 125, Entry of Judgment.

[3] Id. at 126.

[4] Id. at 127-131.

[5] Id. at 132-141.

[6] Id. at 146-149.

[7] Id. at 146.

[8] Id. at 181-207.

[9] Id. at 206-207.

[10] Id. at 383-403.

[11] Id. at 402-403.

[12] Id. at 271-278.

[13] Id. at 53-58.

[14] Id. at 12.

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[15] Id. at 355-382.

[16] Rollo (G.R. No. 173813), p. 318.

[17] Rollo (G.R. No. 172051), pp. 404-409.

[18] Id. at 410-413.

[19] Id. at 414-420.

[20] Id. at 421-423.

[21] Rollo (G.R. No. 173813), p. 14.

[22] Rollo (G.R. No. 172051), p. 426.

[23] City of Butuan v. Hon. Ortiz, et al. citing De La Costa v. Cleofas, (67 Phil. 686-693 [1939]), 113 Phil. 636, 639 (1961).

[24] Republic of the Philippines v. Unimex Micro-Electronics GnBh, G.R. Nos. 166309-10, March 9, 2007.

[25] AN ACT CREATING THE COURT OF TAX APPEALS.

[26] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

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