

SERGIO I. CARBONILLA, EMILIO Y. LEGASPI IV, AND ADONAI Y. REJUSO, PETITIONERS, VS. BOARD OF AIRLINES REPRESENTATIVES (MEMBER AIRLINES: ASIANA AIRLINES, CATHAY PACIFIC AIRWAYS, ...

G.R. No. 193247. September 14, 2011

Ponente: CARPIO, J.

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CARPIO, J.:

The Cases

Before the Court are two petitions for review[1] assailing the Decision[2] promulgated on 9 July 2009 by the Court of Appeals in CA-G.R. SP No. 103250.

In G.R. No. 193247, petitioners Sergio I. Carbonilla, Emilio Y. Legaspi IV, and Adonais Y. Rejuso (Carbonilla, et al.) assail the Resolution[3] promulgated on 5 August 2010 by the Court of Appeals in CA-G.R. SP No. 103250.

In G.R. No. 194276, petitioners Office of the President, represented by Paquito N. Ochoa in his capacity as Executive Secretary, Department of Finance, represented by Cesar V. Purisima in his capacity as Secretary of Finance, and the Bureau of Customs (BOC), represented by Angelito A. Alvarez in his capacity as Commissioner of Customs (Office of the President, et al.), assail the Resolution[4] promulgated on 26 October 2010 by the Court of Appeals in CA-G.R. SP No. 103250.

The Antecedent Facts

The facts, as gathered from the assailed Decision of the Court of Appeals, are as follows:

The Bureau of Customs[5] issued Customs Administrative Order No. 1-2005 (CAO 1-2005) amending CAO 7-92.[6] The Department of Finance[7] approved CAO 1-2005 on 9 February 2006. CAO 7-92 and CAO 1-2005 were promulgated pursuant to Section 3506[8] in relation to Section 608[9] of the Tariff and Customs Code of the Philippines (TCCP).

Petitioners Office of the President, et al. alleged that prior to the amendment of CAO 7-92, the BOC created on 23 April 2002 a committee to review the overtime pay of Customs personnel in Ninoy Aquino International Airport (NAIA) and to propose its adjustment from the exchange rate of P25 to US\$1 to the then exchange rate of P55 to US\$1. The Office of the President, et al. alleged that for a period of more than two years from the creation of the committee, several meetings were conducted with the agencies concerned, including respondent Board of Airlines Representatives (BAR), to discuss the proposed rate adjustment that would be embodied in an Amendatory Customs Administrative Order.

On the other hand, BAR alleged that it learned of the proposed increase in the overtime rates only sometime in 2004 and only through unofficial reports.

On 23 August 2004, BAR wrote a letter addressed to Edgardo L. De Leon, Chief, Bonded Warehouse Division, BOC-NAIA, informing the latter of its objection to the proposed increase in the overtime rates. BAR further requested for a meeting to discuss the matter.

BAR wrote the Secretary of Finance on 31 January 2005 and 21 February 2005 reiterating its concerns against the issuance of CAO 1-2005. In a letter dated 3 March 2005, the Acting District Collector of BOC informed BAR that the Secretary of Finance already approved CAO 1-2005 on 9 February 2005. As such, the increase in the overtime rates became effective on 16 March 2005. BAR still requested for an audience with the Secretary of Finance which was granted on 12 October 2005.

The BOC then sent a letter to BAR's member airlines demanding payment of overtime services to BOC personnel in compliance with CAO 1-2005. The BAR's member airlines refused and manifested their intention to file a petition with the Commissioner of Customs and/or the Secretary of Finance to suspend the implementation of CAO 1-2005.

In a letter dated 31 August 2006,[10] Undersecretary Gaudencio A. Mendoza, Jr. (Usec. Mendoza), Legal and Revenue Operations Group, Department of Finance informed BAR, through its Chairman Felix J. Cruz (Cruz), that they "find no valid ground to disturb the validity of CAO 1-2005, much less to suspend its implementation or effectivity" and that its implementation effective 16 March 2005 is legally proper.

In separate letters both dated 4 December 2006,[11] Cruz requested the Office of the President and the Office of the Executive Secretary to review the decision of Usec. Mendoza. Cruz manifested the objection of the International Airlines operating in the Philippines to CAO 1-2005. On 13 December 2006, Deputy Executive Secretary Manuel B. Gaite (Deputy Exec. Sec. Gaite) issued an Order[12] requiring BAR to pay its appeal fee and submit an appeal memorandum within 15 days from notice. BAR paid the appeal fee and submitted its appeal memorandum on 19 January 2007.

The Decision of the Office of the President

In a Decision[13] dated 12 March 2007, the Office of the President denied the appeal of BAR and affirmed the Decision of the Department of Finance.

The Office of the President ruled that the BOC was merely exercising its rule-making or quasi-legislative power when it issued CAO 1-2005. The Office of the President ruled that since CAO 1-2005 was issued in the exercise of BOC's rule-making or quasi-legislative power, its validity and constitutionality may only be assailed through a direct action before the regular courts. The Office of the President further ruled that, assuming that BAR's recourse before the Office of the President was proper and in order, the appeal was filed out of time because BAR received the letter-decision of the Secretary of Finance on 4 September 2006 but it filed its appeal only on 4 December 2006, beyond the 30-day period provided under Administrative Order No. 18 dated 12 February 1987.

The Office of the President also ruled that the grounds raised by BAR, namely, (1) the failure to comply with the publication requirement; (2) that the foreign exchange cannot be a basis for rate increase; and (3) that increase in rate was ill-timed, were already deliberated during the meetings held between the BOC and the stakeholders and were also considered by the Secretary of Finance. The Office of the President further adopted the position of the BOC that several public hearings and consultations were conducted by the BOC-NAIA Collection District, which were in substantial compliance with Section 9, Chapter I, Book VII of the Administrative Code of 1987. BAR did not oppose the exchange rate used in CAO 7-92 which was the exchange rate at that time and thus, the BOC-NAIA Collection District found it strange that BAR was questioning the fixing of the adjusted pay rates which were lower than the rate provided under Section 3506 of the TCCP. The Office of the President ruled that

there is a legal presumption that the rates fixed by an administrative agency are reasonable, and that the fixing of the rates by the Government, through its authorized agents, involved the exercise of reasonable discretion.

BAR filed a motion for reconsideration. In its Resolution[14] dated 14 March 2008, the Office of the President denied BAR's motion for reconsideration.

BAR filed a petition for review under Rule 45 before the Court of Appeals.

Petitioners Carbonilla, et al. filed an Omnibus Motion to Intervene before the Court of Appeals on the ground that as customs personnel, they would be directly affected by the outcome of the case. Petitioners Carbonilla, et al. also adopted the Comment filed by the Office of the Solicitor General (OSG).

The Decision of the Court of Appeals

In its 26 February 2009 Resolution,[15] the Court of Appeals denied the motion for intervention filed by Carbonilla, et al. The Court of Appeals ruled that the petition before it involved the resolution of whether the decision of the Office of the President was correctly rendered. The Court of Appeals held that the intervenors' case was for collection of their unpaid overtime services and their interests could not be protected or addressed in the resolution of the case. The Court of Appeals ruled that Carbonilla, et al. should pursue their case in a separate proceeding against the proper respondents.

Carbonilla, et al. filed a motion for reconsideration of the 26 February 2009 resolution.

Without resolving Carbonilla, et al.'s motion for reconsideration, the Court of Appeals promulgated the assailed 9 July 2009 Decision which set aside the 12 March 2007 Decision and 14 March 2008 Resolution of the Office of the President and declared Section 3506 of the TCCP, CAO 7-92 and CAO 1-2005 unenforceable against BAR.

Ruling that it could take cognizance of BAR's appeal, the Court of Appeals held that BAR could not be faulted for not filing a case before the Court of Tax Appeals (CTA) because the Office of the President admitted that it preempted any action before the CTA. Deputy Exec. Sec. Gaité treated the letters of BAR as an appeal and required it to pay appeal fee and to submit an appeal memorandum. The Court of Appeals further ruled that what the Office of the President treated as a decision of the Department of Finance was merely an advisory letter dated 31 August 2006 and to treat it as a decision from which an appeal could be taken and then rule that it was not perfected on time would deprive BAR of its right to due process.

The Court of Appeals further ruled that it has the power to resolve the constitutional issue raised against CAO 7-92 and CAO 1-2005. The Court of Appeals ruled that Section 8, Article IX(B) of the Constitution prohibits an appointive public officer or employee from receiving additional, double or indirect compensation, unless specifically authorized by law. The Court of Appeals ruled that Section 3506 of the TCCP only authorized payment of additional compensation for overtime work, and thus, the payment of traveling and meal allowances under CAO 7-92 and CAO 1-2005 are unconstitutional and could not be enforced against BAR members.

The Court of Appeals ruled that Section 3506 of the TCCP failed the completeness and sufficient standard tests to the extent that it attempted to cover BAR members through CAO 7-92 and CAO 1-2005. The Court of Appeals ruled that the phrase "other persons served" did not provide for descriptive terms and conditions that might be completely understood by the BOC. The Court of Appeals ruled that devoid of common distinguishable characteristic, aircraft owners and operators should not have been lumped together with importers and shippers. The Court of Appeals also ruled that Section 3506 of the TCCP failed the sufficient standard test because it does not contain adequate guidelines or limitations needed to map out the boundaries of the delegate's authority.

The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, the petition is GRANTED. Declaring Section 3506 of the TCCP as well as CAO 7-92 and CAO 1-2005 to be unenforceable as against the petitioners, the appealed Decision dated March 12, 2007 and Resolution dated March 14, 2008 are hereby SET ASIDE.

SO ORDERED.[16]

Petitioners Carbonilla, et al. filed their motion for reconsideration of the 9 July 2009 Decision. In its 5 August 2010 Resolution, the Court of Appeals, among others, denied Carbonilla, et al.'s motion for reconsideration.

Carbonilla, et al. came to this Court via a petition for review, docketed as G.R. No. 193247, on the following grounds:

- The Honorable Court of Appeals seriously erred in law in ruling that the Court of Tax Appeals did not have jurisdiction on the subject controversy.
- The Honorable Court of Appeals seriously erred in law in ruling that Section 3506 of the TCCP failed the completeness and sufficient standard tests.
- The Honorable Court of Appeals seriously erred in law in ruling that CAO 7-92 as amended by CAO 1-2005 as well as Section 3506 of the TCCP are not enforceable against BAR's members.
- The Honorable Court of Appeals seriously erred in law in not ruling that estoppel and/or laches should have prevented the BAR from questioning CAO 1-2005.
- The Honorable Court of Appeals seriously erred in law in issuing the decision dated July 9, 2009 in denying petitioners' intervention and motion for reconsideration dated August 3, 2009.[17]

The Office of the President, et al. also filed a motion for reconsideration dated 28 July 2009 assailing the 9 July 2009 Decision of the Court of Appeals.

Meanwhile, in a Resolution promulgated on 12 May 2010,[18] the Court of Appeals directed BAR to continue complying with the 12 March 2007 Decision of the Office of the President. The Court of Appeals ruled that BAR unlawfully withheld the rightful overtime payment of BOC employees when it stopped paying its obligations under CAO 7-92, as amended by CAO 1-2005, since the Court of Appeals' 9 July 2009 Decision had not attained finality pending the resolution of the motion for reconsideration filed by the Office of the President, et al. BAR filed a motion for reconsideration dated 26 May 2010 for the reversal of the 12 May 2010 Resolution of the Court of Appeals.

In a Resolution promulgated on 26 October 2010, the Court of Appeals granted BAR's 26 May 2010 motion for reconsideration and denied the 28 July 2009 motion for reconsideration of the Office of the President, et al.

The Office of the President, et al. filed a petition for review before this Court, docketed as G.R. No. 194276, raising the following grounds:

- I. The Court of Appeals erred in giving due course to respondents BAR and its member airlines' petition for review because it had no jurisdiction over the issues raised therein by respondents, to wit:
 - CAO No. 1-2005 is invalid as the increased overtime pay rates and meal and transportation allowances fixed therein are unreasonable and confiscatory; and
 - The act of the Bureau of Customs charging and/or collecting from BAR's member airlines the cost of the overtime pay and meal and transportation allowances of Bureau of Customs (BOC) personnel in connection with the discharge of their government duties, functions and responsibilities is legally impermissible and, therefore, invalid.

These issues involve the validity and collection of money charges authorized by the Customs Law and thus the Court of Tax Appeals (CTA) has exclusive jurisdiction thereof.

- Granting *arguendo* that the Court of Appeals has jurisdiction over the said issues raised by the BAR and its member airlines, the Court of Appeals should have dismissed their petition for review filed under Rule 45 of the Rules of Court on the following grounds:

- A petition for review under Rule 43 of the Rules of Court cannot be filed to question the quasi-legislative or rule-making power of the Commissioner of Customs;

- BAR's appeal to the Office of the President questioning the 31 August 2006 Decision of the Department of Finance (DOF), finding that CAO No. 1-2005 is valid, was filed out of time;

- Some of respondents BAR member airlines' country managers who executed the verification and certification of non-forum shopping of their petition for review did not have the necessary authorization of the said member airlines for them to execute the same; and

- Administrative procedural due process was observed in the promulgation by the Commissioner of Customs of the questioned CAO No. 1-2005.

- Respondents BAR and its member airlines are guilty of laches and estoppel and thus are effectively barred from questioning the authority of the Commissioner of Customs to promulgate pursuant to Section 608 in relation to Section 3506 of the Tariff and Customs Code (TCCP), as amended, not only CAO No. 1-2005, but also CAO No. 7-92.

- The Court of Appeals erred in going beyond the issues raised by respondents BAR and its member airlines not only in the pleadings filed by them in the proceedings below but also in their petition for review.

- Section 3506 of the TCCP, CAO No. 1-2005 and CAO No. 7-92 are valid. Said law and its implementing regulations neither constitute undue delegation of legislative power nor authorize overpayment of BOC personnel.[19]

The Issues

For resolution in these cases are the following issues:

- Whether the Court of Appeals committed a reversible error in denying the intervention of Carbonilla, et al.;

- Whether the Court of Appeals has jurisdiction over BAR's petition;

- Whether BAR's appeal before the Office of the President was filed on time;

- Whether the officers of some of BAR's member airlines who executed the verification and certification of non-forum shopping have the necessary authorization to execute them;

- Whether BAR was guilty of laches and/or estoppel; and

- Whether the Court of Appeals committed a reversible error in declaring Section 3506 of the TCCP, CAO 7-92, and CAO 1-2005 unenforceable against BAR.

The Ruling of this Court

The petition in G.R. No. 193247 has no merit while the petition in G.R. No. 194276 is meritorious.

Intervention in G.R. No. 193247

On the matter of the intervention of Carbonilla, et al., Section 1, Rule 19 of the 1997 Rules of Civil Procedure

provides:

Section 1. Who may intervene. - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Intervention is not a matter of right but it may be permitted by the courts when the applicant shows facts which satisfy the requirements authorizing intervention.[20] In G.R. No. 193247, the Court of Appeals denied Carbonilla, et al.'s motion for intervention in its 26 February 2009 Resolution on the ground that the case was for collection of unpaid overtime services and thus should be pursued in a separate proceeding against the proper respondents. A reading of the Carbonilla, et al.'s Omnibus Motion[21] supports the ground invoked by the Court of Appeals in denying the motion. The Omnibus Motion states:

- The said movants-intervenors all held offices or were stationed at the Ninoy Aquino International Airport [NAIA] and who have all been rendering overtime services thereat for so many years.
- Movant-Intervenor Carbonilla has retired from government service last September 2007 without his being paid the additional rates set by CAO No. 1-2005 which became effective on March 16, 2007. The effectivity and implementation of the said CAO No. 1-2005 is the main issue in this case.
- Thus, it is noteworthy to mention that all the movants-intervenors all rendered overtime services since March 16, 2005 or for all the time material to the issue in this case.
- Movants-Intervenors urgently need their respective [differential]/back payments representing overtime services rendered from 16 March 2005 to the present pursuant to the implementation of CAO No. 1-2005.
- Said differential/back payments pursuant to CAO No. 1-2005 would be of great help to the movants-intervenors considering that as of 24 January 2008, herein movants-intervenors were stripped of their respective overtime duties by the District Collector of Customs at NAIA for reasons only known to the latter.
- The full implementation of CAO No. 1-2005 would not only benefit the cause and financial needs of herein movants-intervenors but also that of the other 900 or so employees of the Bureau of Customs-NAIA who are rendering overtime services thereat up to the present.[22]

Clearly, Carbonilla, et al. were really after the payment of their differential or back payments for services rendered. Hence, the Court of Appeals correctly denied the motion for intervention.

It should be stressed that the allowance or disallowance of a motion for intervention is addressed to the sound discretion of the courts.[23] The permissive tenor of the Rules of Court shows the intention to give the courts the full measure of discretion in allowing or disallowing the intervention.[24] Once the courts have exercised this discretion, it could not be reviewed by certiorari or controlled by mandamus unless it could be shown that the discretion was exercised in an arbitrary or capricious manner.[25] Carbonilla, et al. failed to show that the Court of Appeals rendered its resolution in an arbitrary or capricious manner.

In addition, Carbonilla, et al. admitted in their petition that their motion for reconsideration of the 26 February 2009 Resolution of the Court of Appeals had been denied in open court during the oral arguments held by the Court of Appeals on 16 December 2009.[26] Carbonilla, et al. did not act on the denial of this motion but only pursued their motion for reconsideration of the 9 July 2009 Decision of the Court of Appeals. Hence, the denial of Carbonilla, et al.'s motion for intervention had already attained finality.

Having ruled against the right of Carbonilla, et al. to intervene, we see no reason to rule on the other issues they raise unless raised in G.R. No. 194276.

We now discuss the issues raised in G.R. No. 194276.

Jurisdiction of the Court of Appeals

The Office of the President, et al. argue that the Court of Appeals should have denied BAR's petition because it had no jurisdiction over the issues raised, involving the validity and collection of money charges authorized by Customs Law, which are under the jurisdiction of the CTA.

We do not agree.

The jurisdiction of the Court of Appeals over BAR's petition stems from Section 1 in relation to Section 3, Rule 43 of the 1997 Rules of Civil Procedure which states that appeals from "awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi judicial functions[.]" which includes the Office of the President, may be taken to the Court of Appeals. BAR's petition for review to the Court of Appeals from the 12 March 2007 Decision and 14 March 2008 Resolution of the Office of the President falls within the jurisdiction of the Court of Appeals.

As noted by the Court of Appeals, the Office of the President took cognizance of Cruz's letter dated 4 December 2006 requesting for a review of the 31 August 2006 letter of Usec. Mendoza. Deputy Exec. Sec. Gaite required BAR to pay the appeal fee and submit its appeal memorandum. Thereafter, the Office of the President issued its 12 March 2007 Decision affirming the decision of the Department of Finance and then denied BAR's motion for reconsideration in its 14 March 2008 Resolution. BAR's only recourse is to file a petition for review before the Court of Appeals under Rule 43 of the 1997 Rules on Civil Procedure. The exercise by the Court of Appeals of its appellate jurisdiction over the decision of the Office of the President is entirely distinct from the issue of whether BAR committed a procedural error in elevating the case before the Office of the President instead of filing its appeal before the CTA.

Timeliness of the Appeal before the Office of the President

The Court of Appeals ruled that the question of whether BAR's appeal before the Office of the President was filed on time was rendered academic when BAR paid the appeal fee and submitted its appeal memorandum on time. The Court of Appeals held that Deputy Exec. Sec. Gaite could not validly require BAR to perfect its appeal in his 13 December 2006 Order and then rule, after its perfection, that the appeal was not filed on time. The Court of Appeals ruled that the 13 December 2006 Order of Deputy Exec. Sec. Gaite stopped BAR from pursuing any recourse with the CTA. The Court of Appeals further ruled that the Office of the President did not explain how the 31 August 2006 letter of Usec. Mendoza became a decision of the Secretary of Finance when it was only an advisory letter.

We do not agree with the Court of Appeals.

The Office of the President is not precluded from issuing the assailed decision in the same way that this Court is not proscribed from accepting a petition before it, requiring the payment of docket fees, directing the respondent to comment on the petition, and after studying the case, from ruling that the petition was filed out of time or that it lacks merit.

However, Cruz's 4 December 2006 letters to then President Gloria Macapagal Arroyo and then Exec. Sec. Eduardo Ermita are not in the nature of an appeal provided for under Administrative Order No. 18, series of 1987 (AO 18).[27] Section 1 of AO 18 provides that an appeal to the Office of the President shall be taken within 30

days from receipt by the aggrieved party of the decision, resolution or order complained of or appealed from. Section 2 of AO 18 cites caption, docket number of the case as presented in the office of origin, and addresses of the parties. Section 3 mentions pauper litigants. In sum, the appeal provided under AO 18 refers to adversarial cases. It does not refer to a review of administrative rules and regulations, as what BAR asked the Office of the President to do in this case. BAR, in writing the Office of the President, was exhausting its administrative remedies. BAR could still go to the regular courts after the Office of the President acted on its request for a review of Usec. Mendoza's 31 August 2006 letter. The decision of the Office of the President did not foreclose BAR's remedy to bring the matter to the regular courts.

BAR is assailing the issuance and implementation of CAO 1-2005. CAO 1-2005 is an amendment to CAO 7-92. CAO 7-92 was issued "[b]y authority of Section 608, in relation to Section 3506, of the Tariff and Customs Code of the Philippines x x x." On this score, we do not agree with the Office of the President that BAR, instead of filing an appeal before its office, should have filed an appeal before the CTA in accordance with Section 7 of Republic Act No. 9282[28] (RA 9282) which reads:

Section 7. Jurisdiction. - The CTA shall exercise:

(a) Exclusive appellate jurisdiction, to review by appeal, as herein provided:

x x x x

4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees and other money charges, seizure, detention or release of property affected, fines forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs.

Under Section 11 of RA 9282, an appeal to the CTA should be taken within 30 days from receipt of the assailed decision or ruling.

However, Section 2313, Book II of Republic Act No. 1937 (RA 1937)[29] provides:

Section 2313. Review of Commissioner. - The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification on writing by the Collector of his action or decision, file a written notice to the Collector with a copy furnished to the Commissioner of his intention to appeal the action or decision of the Collector to the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision. Provided, That when an appeal is filed beyond the period herein prescribed, the same shall be deemed dismissed.

If in any seizure proceedings, the Collector renders a decision adverse to the Government, such decision shall automatically be reviewed by the Commissioner and the records of the case shall be elevated within five (5) days from the promulgation of the decision of the Collector. The Commissioner shall render a decision on the automatic appeal within thirty (30) days from receipt of the records of the case. If the Collector's decision is reversed by the Commissioner, the decision of the Commissioner shall be final and executory. However, if the Collector's decision is affirmed, or if within thirty (30) days from receipt of the record of the case by the Commissioner no decision is rendered of the decision involves imported articles whose published value is five million pesos (P5,000,000) or more, such decision shall be deemed automatically appealed to the Secretary of Finance and the records of the proceedings shall be elevated within five (5) days from the promulgation of the decision of the Commissioner or of the Collector under appeal, as the case may be. Provided, further, That if the decision of the Commissioner or of the Collector under appeal, as the case may be, is affirmed by the Secretary of Finance, or if within thirty (30) days from receipt of the records of the proceedings by the Secretary of Finance, no decision is rendered, the decision of the Secretary of Finance, or of the

Commissioner, or of the Collector under appeal, as the case may be, shall become final and executory.

x x x x

Section 2402 of RA 1937 further provides:

Section 2402. Review by Court of Appeals. - The party aggrieved by a ruling of the Commissioner in any matter brought before him upon protest or by his action or ruling in any case of seizure may appeal to the Court of Tax Appeals, in the manner and within the period prescribed by law and regulations.

Clearly, what is appealable to the CTA are cases involving protest or seizure, which is not the subject of BAR's appeal in these cases. BAR's actions, including seeking an audience with the Secretary of Finance,[30] as well as writing to the Executive Secretary and the Office of the President, are part of the administrative process to question the validity of the issuance of an administrative regulation, that is, of CAO 1-2005, entitled Amendments to Customs Administrative Order No. 7-92 (Rules and Regulations Governing the Overtime Pay and Other Compensations Related Thereto Due to Customs Personnel at the NAIA).

CAO 1-2005 was issued pursuant to Section 608 of the TCCP which provides:

Section 608. Commissioner to Make Rules and Regulations. - The Commissioner shall, subject to the approval of the Secretary of Finance, promulgate all rules and regulations necessary to enforce the provisions of this Code. x x x

The jurisdiction over the validity and constitutionality of rules and regulations issued by the Commissioner under Section 608 of the TCCP lies before the regular courts. It is not within the jurisdiction of the Office of the President or the CTA. Hence, the Office of the President erred in holding that BAR's appeal was filed late because BAR can still raise the issue before the regular courts.

Verification and Certification of Non-Forum Shopping

The Office of the President, et al. allege that the Court of Appeals should have dismissed the petition because of BAR's failure to comply fully with the requirements of verification and certification of non-forum shopping.

We agree with the Court of Appeals in its liberal interpretation of the Rules. Verification of a pleading is a formal, not jurisdictional, requirement.[31] The requirement is simply a condition affecting the form of the pleading and non-compliance with the requirement does not render the pleading fatally defective.[32]

As regards the certification of non-forum shopping, this Court may relax the rigid application of the rules to afford the parties the opportunity to fully ventilate their cases on the merits.[33] This is in line with the principle that cases should be decided only after giving all parties the chance to argue their causes and defenses.[34] Technicality and procedural imperfections should not serve as basis of decisions and should not be used to defeat the substantive rights of the other party.[35]

Estoppel and Laches

The Office of the President, et al. allege that BAR is guilty of estoppel and laches because it did not question CAO 7-92 which had been in effect since 1992. The Office of the President, et al. argue that a direct attack of CAO 1-2005 is a collateral attack of CAO 7-92 since CAO 7-92 is the main administrative regulation enacted to implement Section 3506 of the TCCP.

The argument has no merit.

BAR is not questioning the validity of CAO 7-92 or Section 3506 of the TCCP. BAR is questioning the validity

of CAO 1-2005 on the following grounds: (1) that it was approved in violation of BAR's right to due process because its approval did not comply with the required publication notice under Section 9(2), Chapter I, Book VII, of the Administrative Code of the Philippines; (2) that CAO 1-2005 inappropriately based its justification on the declining value of the Philippine peso versus the U.S. dollar when services of the BOC are rendered without spending any foreign currency; and (3) that the increase in BOC rates aggravates the already high operating cost paid by the airlines which are still reeling from the impact of consecutive negative events such as SARS, Iraqi war, avian flu and the unprecedented increase in fuel prices. BAR's objection to CAO 1-2005 could not be considered a direct attack on CAO 7-92 because BAR was merely objecting to the amendments to CAO 7-92. BAR did not question the validity of CAO 7-92 itself. Even during the pendency of these cases before the Court of Appeals, BAR members continued to pay the rates prescribed under CAO 7-92. It was only upon the promulgation of the Court of Appeals' Decision declaring CAO 7-92 and CAO 1-2005 unconstitutional that BAR recommended to its members to stop paying the charges imposed by the BOC.

Hence, BAR is not estopped from questioning CAO 1-2005 on the ground alone that it did not question the validity of CAO 7-92.

Constitutionality of CAO 7-92, CAO 1-2005
and Section 3506 of the TCCP

The Office of the President, et al. allege that the Court of Appeals acted beyond its jurisdiction when it passed upon the validity of CAO 7-92 and Section 3506 of the TCCP.

We do not agree with the Office of the President, et al.

Section 8, Rule 51 of the 1997 Rules of Civil Procedure also states:

Section 8. Questions that may be decided. - No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein, will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

The Court of Appeals deemed it necessary to rule on the issue for the proper determination of these cases. The Court has ruled that the Court of Appeals is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice.[36] Further, while it is true that the issue of constitutionality must be raised at the first opportunity, this Court, in the exercise of sound discretion, can take cognizance of the constitutional issues raised by the parties in accordance with Section 5(2)(a), Article VII of the 1987 Constitution.[37]

The Court has further ruled:

When an administrative regulation is attacked for being unconstitutional or invalid, a party may raise its unconstitutionality or invalidity on every occasion that the regulation is being enforced. For the Court to exercise its power of judicial review, the party assailing the regulation must show that the question of constitutionality has been raised at the earliest opportunity. This requisite should not be taken to mean that the question of constitutionality must be raised immediately after the execution of the state action complained of. That the question of constitutionality has not been raised before is not a valid reason for refusing to allow it to be raised later. A contrary rule would mean that a law, otherwise unconstitutional, would lapse into constitutionality by the mere failure of the proper party to promptly file a case to challenge the same.[38]

Section 3506 of the TCCP provides:

Section 3506. Assignment of Customs Employees to Overtime Work. - Customs employees may be assigned by a Collector to do overtime work at rates fixed by the Commissioner of Customs when the service rendered is to be paid by the importers, shippers or other persons served. The rates to be fixed shall not be less than that prescribed by law to be paid to employees of private enterprise.

We do not agree with the Court of Appeals in excluding airline companies, aircraft owners, and operators from the coverage of Section 3506 of the TCCP. The term "other persons served" refers to all other persons served by the BOC employees. Airline companies, aircraft owners, and operators are among other persons served by the BOC employees. As pointed out by the OSG, the processing of embarking and disembarking from aircrafts of passengers, as well as their baggages and cargoes, forms part of the BOC functions. BOC employees who serve beyond the regular office hours are entitled to overtime pay for the services they render.

The Court of Appeals ruled that, applying the principle of ejusdem generis, airline companies, aircraft owners, and operators are not in the same category as importers and shippers because an importer "brings goods to the country from a foreign country and pays custom duties" while a shipper is "one who ships goods to another; one who engages the services of a carrier of goods; one who tenders goods to a carrier for transportation." However, airline passengers pass through the BOC to declare whether they are bringing goods that need to be taxed. The passengers cannot leave the airport of entry without going through the BOC. Clearly, airline companies, aircraft owners, and operators are among the persons served by the BOC under Section 3506 of the TCCP.

The overtime pay of BOC employees may be paid by any of the following: (1) all the taxpayers in the country; (2) the airline passengers; and (3) the airline companies which are expected to pass on the overtime pay to passengers. If the overtime pay is taken from all taxpayers, even those who do not travel abroad will shoulder the payment of the overtime pay. If the overtime pay is taken directly from the passengers or from the airline companies, only those who benefit from the overtime services will pay for the services rendered. Here, Congress deemed it proper that the payment of overtime services shall be shouldered by the "other persons served" by the BOC, that is, the airline companies. This is a policy decision on the part of Congress that is within its discretion to determine. Such determination by Congress is not subject to judicial review.

We do not agree with the Court of Appeals that Section 3506 of the TCCP failed the completeness and sufficient standard tests. Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it.[39] The second test requires adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot.[40] Contrary to the ruling of the Court of Appeals, Section 3506 of the TCCP complied with these requirements. The law is complete in itself that it leaves nothing more for the BOC to do: it gives authority to the Collector to assign customs employees to do overtime work; the Commissioner of Customs fixes the rates; and it provides that the payments shall be made by the importers, shippers or other persons served. Section 3506 also fixed the standard to be followed by the Commissioner of Customs when it provides that the rates shall not be less than that prescribed by law to be paid to employees of private enterprise.

Contrary to the ruling of the Court of Appeals, BOC employees rendering overtime services are not receiving double compensation for the overtime pay, travel and meal allowances provided for under CAO 7-92 and CAO 1-2005. Section 3506 provides that the rates shall not be less than that prescribed by law to be paid to employees of private enterprise. The overtime pay, travel and meal allowances are payment for additional work rendered after regular office hours and do not constitute double compensation prohibited under Section 8, Article IX(B) of the 1987 Constitution[41] as they are in fact authorized by law or Section 3506 of the TCCP.

BAR raises the alleged failure of BOC to publish the required notice of public hearing and to conduct public hearings to give all parties the opportunity to be heard prior to the issuance of CAO 1-2005 as required under

Section 9(2), Chapter I, Book VII of the Administrative Code of the Philippines. Section 9(2) provides:

Sec. 9. Public Participation. - (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.

(3) In cases of opposition, the rules on contested cases shall be observed.

BAR's argument has no merit.

The BOC created a committee to re-evaluate the proposed increase in the rate of overtime pay and for two years, several meetings were conducted with the agencies concerned to discuss the proposal. BAR and the Airline Operators Council participated in these meetings and discussions. Hence, BAR cannot claim that it was denied due process in the imposition of the increase of the overtime rate. CAO 1-2005 was published in the Manila Standard, a newspaper of general circulation in the Philippines on 18 February 2005[42] and while it was supposed to take effect on 5 March 2005, or 15 days after its publication, the BOC-NAIA still deferred BAR's compliance until 16 March 2005.

WHEREFORE, we DENY the petition in G.R. No. 193247. We GRANT the petition in G.R. No. 194276 and SET ASIDE the 9 July 2009 Decision and 26 October 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 103250. Petitioner Bureau of Customs is DIRECTED to implement CAO 1-2005 immediately.

SO ORDERED.

Brion, Del Castillo,[***] Perez, and Sereno, JJ., concur.

[*] Originally represented by Hon. Eduardo Ermita.

[**] Originally represented by Hon. Margarito B. Teves.

[***] Designated as Acting Member per Special Order No. 1077 dated 12 September 2011.

[****] Originally represented by Hon. Napoleon Morales.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo (G.R. No. 193247), pp. 41-70. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Jose L. Sabio, Jr. and Ricardo R. Rosario, concurring.

[3] Id. at 79-80. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Normandie B. Pizarro and Ricardo R. Rosario, concurring.

[4] Rollo (G.R. No. 194276), pp. 134-139. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Normandie B. Pizarro and Francisco P. Acosta, concurring.

[5] Id. at 198. Through then Commissioner George M. Jereos.

[6] Rules and Regulations Governing the Overtime Services and Pay, Travelling, Board and Lodging Expenses and/or Meal Allowance at the Ninoy Aquino International Airport.

[7] Through then Secretary Juanita P. Amatong.

[8] Section 3506. Assignment of Customs Employees to Overtime Work. - Custom employees may be assigned by a Collector to do overtime work at rates fixed by the Commissioner of Customs when the service rendered is to be paid for by importers, shippers, or other persons served. The rates to be fixed shall not be less than that prescribed by law to be paid to employees of private enterprise.

[9] Section 608. Commissioner to Make Rules and Regulations. - The Commissioner shall, subject to the approval of the Secretary of Finance, promulgate all rules and regulations necessary to enforce the provisions of this Code.

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[10] Rollo (G.R. No. 194276), pp. 167-168.

[11] Id. at 664-665, 211-218.

[12] Id. at 220-221.

[13] Id. at 159-166. Signed by Manuel B. Gaite, Deputy Executive Secretary for Legal Affairs by authority of the Executive Secretary.

[14] Id. at 156-157.

[15] Rollo (G.R. No. 193247), pp. 653-655. Penned by Associate Justice Vicente S.E. Veloso with Associate Justice Edgardo P. Cruz and Ricardo R. Rosario, concurring.

[16] Rollo (G.R. No. 194276), p. 132.

[17] Rollo (G.R. No. 193247), pp. 22-23.

[18] Rollo (G.R. No. 194276), pp. 241-243. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Normandie B. Pizarro and Ricardo R. Rosario, concurring.

[19] Id. at 41-43.

[20] Francisco, Jr. v. The House of Representatives, 460 Phil. 830 (2003).

[21] Rollo (G.R. No. 193247), pp. 642-647.

[22] Id. at 643-644.

[23] Heirs of Geronimo Restivera v. De Guzman, 478 Phil. 592 (2004).

[24] Id.

[25] Id.

[26] Rollo (G.R. No. 193247), p. 20.

[27] Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines.

[28] 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 of Republic Act No. 1125, as Amended, Otherwise Known as The Law Creating the Court of Tax Appeals, And For Other Purposes.

[29] An Act to Revise and Codify the Tariff and Customs Law of the Philippines.

[30] Rollo (G.R. No. 194276), p. 107.

[31] Millennium Erectors Corporation v. Magallanes, G.R. No. 184362, 15 November 2010, 634 SCRA 708.

[32] Id.

[33] Benedicto v. Lacson, G.R. No. 141508, 5 May 2010, 620 SCRA 82.

[34] Id.

[35] Id.

[36] Demafelis v. Court of Appeals, G.R. No. 152164, 23 November 2007, 538 SCRA 305.

[37] Section 5. The Supreme Court shall have the following powers:

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(2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

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[38] Moldex Realty, Inc. v. Housing and Land Use Regulatory Board, G.R. No. 149719, 21 June 2007, 525 SCRA 198, 204.

[39] Gerochi v. Department of Energy, G.R. No. 159796, 17 July 2007, 527 SCRA 696.

[40] Id.

[41] Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office or title of any kind from any foreign government.

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[42] Rollo (G.R. No. 194276), p. 198.

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