

COMMISSIONER OF CUSTOMS, COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS, AND THE BUREAU OF CUSTOMS, PETITIONERS, VS. PILIPINAS SHELL PETROLEUM CORPORATION (PSPC), WILLIE J. SARMIE...

G.R. No. 205002. April 20, 2016

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

"Forum shopping exists if the [suits] raise identical causes of action, subject matter, and issues[; thus, t]he mere filing of several cases based on the same incident does not necessarily constitute forum shopping." [1]

This Petition for Review on Certiorari [2] assails the June 11, 2012 Decision [3] and the August 28, 2012 Resolution [4] of the Court of Tax Appeals (CTA) in C.T.A. EB Case No. 744.

Factual Antecedents

Respondent Pilipinas Shell Petroleum Corporation (PSPC) is a domestic corporation engaged in the business of manufacturing and selling petroleum products for distribution in the Philippines. [5]

On January 30, 2009, petitioner District Collector Juan N. Tan, the Collector of Customs of the Port of Batangas, issued a demand letter [6] asking respondent PSPC to pay the excise tax and value-added tax (VAT), plus penalty on its importation of catalytic cracked gasoline (CCG) and light catalytic cracked gasoline (LCCG) for the years 2006 to 2008 in the total amount of P21,419,603,310.00.

Respondent PSPC, however, refused to heed the demand and, instead, issued a letter dated February 13, 2009 questioning the factual or legal basis of the demand. [7]

On February 18, 2009, petitioner District Collector issued another letter [8] reiterating the demand for the payment of the said unpaid taxes.

On March 5, 2009, respondent PSPC appealed the matter to petitioner Commissioner of Customs (COC) Napoleon Morales. [9] Pending the resolution of the said appeal, petitioner COC ordered petitioner District Collector to observe status quo. [10]

On November 11, 2009, petitioner COC denied the appeal and ordered respondent PSPC to pay the unpaid taxes to avoid the application of Section 1508 [11] of the Tariff and Customs Code of the Philippines (TCCP). [12]

Unfazed, respondent PSPC moved for reconsideration [13] but petitioner COC denied the same in his letter [14] dated November 26, 2009.

On December 3, 2009, respondent PSPC filed with the CTA a Petition for Review [15] docketed as CTA Case No. 8004 assailing the Letter-Decisions dated November 11 and 26, 2009 of petitioner COC. Respondent PSPC likewise filed a Verified Motion for the issuance of a Suspension Order against the collection of taxes with a

prayer for immediate issuance of a Temporary Restraining Order (TRO).[16]

On December 9, 2009, the CTA First Division issued a Resolution granting respondent PSPC's application for a TRO for a period of 60 days or until February 7, 2010.[17]

On February 9, 2010, after due hearing on the Verified Motion, the CTA First Division issued a Resolution[18] denying respondent PSPC's request for a suspension order.

In light of the denial of the Verified Motion, petitioner District Collector issued a Memorandum dated February 9, 2010 ordering the personnel of petitioner Bureau of Customs (BOC) in the Port of Batangas to hold the delivery of all import shipments of respondent PSPC to satisfy its excise tax liabilities.[19]

On February 10, 2010, respondent PSPC filed with the Regional Trial Court (RTC), Fourth Judicial Region, Batangas City, Branch 3, a Complaint for Injunction with prayer for the ex-parte issuance of a 72-hour TRO,[20] docketed as Civil Case No. 8780, to enjoin the implementation of the Memorandum dated February 9, 2010. In the Verification and Certification[21] attached to the Complaint for Injunction, respondent Vice President for Finance and Treasurer Willie J. Sarmiento (Sarmiento) declared that there is a pending case before the CTA, however, it involves different, issues and/or reliefs.

On the same day, the RTC issued a 72-hour TRO, which it later extended to 17 more days.[22]

On March 19, 2010, petitioners filed with the CTA a Motion to Cite respondents PSPC, Sarmiento, and Atty. Cipriano U. Asilo for Direct Contempt of Court.[23] As per the Resolution dated July 7, 2010, the said Motion, docketed as CTA Case No. 8121, was consolidated with the main case, CTA Case No. 8004.[24]

Meanwhile, petitioner District Collector filed a Complaint-Affidavit[25] for Perjury under Article 183 of the Revised Penal Code (RPC) against respondent Sarmiento in relation to the Verification and Certification he filed before the RTC of Batangas City, where he declared that the Petition for Review PSPC filed with the CTA does not involve the same issues and/or reliefs.

On April 8, 2010, an Information[26] for Perjury against respondent Sarmiento, docketed as Criminal Case No. 52763, was filed before Branch 1 of the Municipal Trial Court in Cities (MTCC), Batangas City.

On August 9, 2010, the MTCC rendered a Resolution[27] dismissing the case for Perjury for lack of probable cause, which later became final and executory.[28]

Ruling of the Court of Tax Appeals Division

On October 18, 2010, the CTA Third Division rendered a Resolution[29] denying the Motion to Cite respondents in Direct Contempt of Court. Although the parties in the CTA case and the Batangas injunction case are the same, the CTA found that the rights asserted and the reliefs prayed for are different.[30] It pointed out that the CTA case assails the Letter-Decisions dated November 11 and 26, 2009, while the Batangas injunction case opposes the Memorandum dated February 9, 2010.[31] The CTA also opined that a decision in one case would not result in res judicata in the other case.[32] Thus, it ruled that the filing of the Batangas injunction case does not constitute forum shopping.[33] And since no forum shopping exists, the CTA found no reason to cite respondents in direct contempt of court.

Feeling aggrieved, petitioners moved for reconsideration[34] but the CTA Third Division denied the same in its Resolution[35] dated March 9, 2011.

Ruling of the Court of Tax Appeals En Banc

Unfazed, petitioners elevated the matter to the CTA En Banc via a Petition for Review.[36]

On June 11, 2012, the CTA En Banc rendered a Decision affirming the Resolutions dated October 18, 2010 and March 9, 2011 of the CTA Third Division.

Petitioners sought reconsideration of the Decision.

On August 28, 2012, the CTA En Banc rendered a Resolution denying petitioners' motion for reconsideration.

Issue

Hence, petitioners filed the instant Petition for Review on Certiorari raising the sole issue of whether the CTA committed a reversible error when it ruled that respondents did not commit willful and deliberate forum shopping.[37]

Petitioners' Arguments

Petitioners contend that the CTA seriously erred in finding respondents not guilty of willful and deliberate forum shopping considering that the Verified Motion filed before the CTA and the Complaint for Injunction filed before the RTC of Batangas involve exactly the same parties, the same rights, and the same reliefs.[38] Petitioners claim that the material allegations in both pleadings are based on the same set of facts;[39] that both cases substantially raise the same issues;[40] and that both seek to enjoin the enforcement of Section 1508 of the TCCP.[41] Petitioners further claim that the phrase "to refrain or stop from exercising any action described in, under or pursuant to, Section 1508 of the TCCP" in the prayer of the Verified Motion is all-encompassing as it includes whatever relief respondent PSPC sought in the Complaint for Injunction filed before the RTC.[42] Moreover, petitioners allege that the filing of the Complaint for Injunction was done in utter disrespect of the CTA exclusive jurisdiction;[43] that it was a calculated maneuver of respondents to undermine the CTA's denial of their prayer for the issuance of a suspension order;[44] and that it should not be allowed, as it constitutes forum shopping.[45] Finally, petitioners assert that the dismissal of the perjury case against respondent Sarmiento does not estop them from claiming that respondents are guilty of forum shopping, as the elements of perjury are not the same as that of contempt via willful forum shopping.[46]

Respondents' Arguments

Respondents, on the other hand, argue that the issue of forum shopping may no longer be re-opened or re-litigated, as this has long been resolved with finality in the criminal case for perjury filed against respondent Sarmiento. They insist that the dismissal of the criminal complaint for perjury against respondent Sarmiento on the ground that there is no forum shopping for which reason the third element of perjury is wanting, is binding on the CTA.[47] Thus, petitioners are barred by prior judgment[48] and by the principle of collusiveness of judgment.[49] In addition, respondents maintain that the Batangas injunction case is different from the case pending before the CTA as the former pertains to importations already released and transferred to the possession of respondent PSPC while the latter pertains to "future importations" of respondent PSPC.[50]

Our Ruling

The Petition must fail.

In a nutshell, petitioners contend that respondents should be cited for direct contempt of court pursuant to Section 5,[51] Rule 7 of the 1997 Rules of Civil Procedure, as amended, which states that the submission of a false certification on non-forum shopping constitutes indirect or direct contempt of court, and that the willful and deliberate commission of forum shopping constitutes direct contempt of court.

We do not agree.

Under prevailing jurisprudence, forum shopping can be committed in three ways, to wit:

(1)

filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*);

(2)

filing multiple cases based on the same cause of action and [with] the same prayer, the previous case having been finally resolved (*res judicata*); or

(3)

filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*)[52]

Corollarily, there is forum shopping when a party seeks a favorable opinion in another forum, other than by an appeal or by certiorari, as a result of an adverse opinion in one forum, or when he institutes two or more actions or proceedings grounded on the same cause, hoping that one or the other court would make a favorable disposition on his case.[53] In other words, "[f]orum shopping exists when a party repeatedly avails himself of several judicial remedies in different courts, [either] simultaneously or successively, all [of which are] substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." [54]

Hence, to constitute forum shopping the following elements must be present:

(1)

identity of the parties or, at least, of the parties who represent the same interest in both actions;

(2)

identity of the rights asserted and relief prayed for, as the latter is founded on the same set of facts; and

(3)

identity of the two preceding particulars, such that any judgment rendered in the other action will amount to *res judicata* in the action under consideration or will constitute *litis pendentia*. [55]

In this case, a careful reading of the Verified Motion in the CTA case vis-a-vis the Complaint for Injunction filed with the RTC of Batangas reveals that although both cases have the same parties, originated from the same factual antecedents, and involve Section 1508 of the TCCP, the subject matter, the cause of action, the issues involved, and the reliefs prayed for are not the same.

The subject matter and the causes of action are not the same.

The subject matter in the CTA case is the alleged unpaid taxes of respondent PSPC on its importation of CCG and LCCG for the years 2006 to 2008 in the total amount of P21,419,603,310.00, which is sought to be collected by petitioners. On the other hand, the subject matter of the Batangas injunction case is the 13 importations/shipments of respondent PSPC for the period January to February 2010, which respondent PSPC claims are threatened to be seized by petitioners pursuant to the Memorandum dated February 9, 2010 issued by petitioner District Collector.

Also, the cause of action in the CTA case is based on the Letter-Decisions of petitioner COC, finding respondent PSPC liable for excise taxes and VAT; while the cause of action in the Batangas injunction case is the

Memorandum dated February 9, 2010, ordering the personnel of petitioner BOC in the Port of Batangas to hold the delivery of all import shipments of respondent PSPC.

The issues raised are not the same.

Furthermore, the issues raised are not the same. Respondent PSPC filed the CTA case to assail the Letter-Decisions of petitioner COC, finding it liable to pay excise taxes and VAT on its importation of CCG and LCCG. Thus, in the Petition for Review, the main issue involved is the validity of the Letter-Decisions; while in the Verified Motion, the issue raised is respondent PSPC's entitlement to a suspension order pending the resolution of the validity of the Letter-Decisions.

On the other hand, respondent PSPC filed the Batangas injunction case to question the validity of the Memorandum dated February 9, 2010 and to oppose the seizure of the 13 importations/shipments on the ground that petitioners no longer have jurisdiction over the subject importations/shipments as these have been discharged and placed in its Batangas refinery since 90% of the import duties due on the said shipments have been paid. To support its case, respondent PSPC interposed that Section 1508 of the TCCP is available only if petitioner BOC has actual physical custody of the goods sought to be held, a situation not present in the case of the said importations/shipments; that petitioners have no reason to seize the 13 importations/shipments, as only two were CCG and only one was LCCG; and that the Memorandum dated February 9, 2010 deprives respondent PSPC of its property without due process of law. From the arguments interposed by respondent PSPC in the Batangas injunction case, it is clear that the issue to be resolved by the RTC is limited to the validity of the Memorandum dated February 9, 2010.

The reliefs prayed for are not the same.

Likewise, a comparison of prayers in the CTA case and Batangas injunction case shows that the reliefs prayed for are not the same.

PETITION FOR REVIEW

(CTA)

VERIFIED MOTION

(CTA)

COMPLAINT FOR INJUNCTION

(RTC)

WHEREFORE, it is respectfully prayed that the Honorable Court:

a. Give due course to the instant Petition for Review; and

b. Upon due consideration, reverse and nullify the Letter-Decision dated 11 November 2009 and Letter-Decision dated 26 November 2009 issued by [petitioner] COC and render a Decision finding [respondent] PSPC not liable for any of the excise taxes and the VAT thereon demanded by [petitioner] COC, and permanently enjoining [petitioners], their officer's, subordinates, personnel and agents, or any other person acting on their behalf or authority, from demanding and/or collecting by any manner from [respondent] PSPC any and all duties and excise taxes, including any VAT thereon, on the subject CCG and LCCG importations, as well as from collecting excise taxes and VAT on future importations of CCGs/LCCGs by [respondent] PSPC.[56]

WHEREFORE, it is respectfully prayed that the Honorable Court:

a. Immediately upon the filing of the instant Petition and Verified Motion, ISSUE, a [TRO] effective for such number of days as sufficient for the Honorable Court to hear, consider and issue a Suspension Order, ordering, commanding and directing [petitioners], their officers, subordinates, personnel and agents, and/or any other person acting on their behalf or authority, to refrain or stop from exercising any action described in, under, or pursuant to, Section 1508 of the TCCP, including holding delivery or release of imported articles, and/or from performing any act of collecting the disputed amounts by distraint, levy, seizure, impounding, or sale of the importations of [respondent] PSPC, and/or from collecting excise taxes and VAT on future importations of CCGs and LCCGs by [respondent] PSPC; and

b. Thereafter, after due proceedings, ISSUE a SUSPENSION ORDER ordering, commanding, and directing [petitioners], their officers, subordinates, personnel and agents, and/or any other person acting on their behalf or authority, to refrain or stop from exercising any action described in, under, or pursuant to, Section 1508 of the TCCP, including holding delivery or release of imported articles, and/or from performing any act of collecting the disputed amounts by distraint, levy, seizure, impounding, or sale of importations of [respondent] PSPC, and/or from collecting excise taxes and VAT on future importations of CCGs and LCCGs by [respondent] PSPC, during the pendency of the instant case.[57]

WHEREFORE, it is respectfully prayed of the Honorable Court that:

- 1) Upon filing of the instant complaint, a 72-hour [TRO] be issued ex parte RESTRAINING [petitioners], their assigns, agents, employees, representatives or any person under their direction and/or control from entering the Refinery or property of [respondent] PSPC and/or seize, confiscate, or forcibly take possession of the imported shipments of [respondent] PSPC that are already in the latter's physical custody and/or possession;
- 2) After due notice and hearing, that a [TRO] and/or writ of preliminary injunction be ISSUED on such bond as the Honorable Court may require; and
- 3) After hearing on the merits, render judgment making the writ of injunction PERMANENT.[58]

In the CTA case, respondent PSPC seeks the reversal of the Letter-Decisions of petitioner COC in order to prevent petitioners from imposing payment of excise tax and VAT for importations of CCG and LCCG for the years 2004 to 2009. Pending the resolution of the said case, respondent PSPC filed a Verified Motion praying for the issuance of a suspension order to prevent petitioners from exercising any action pursuant to Section 1508 of the TCCP based on the Letter-Decisions of petitioner COC. While in the Batangas injunction case, respondent PSPC seeks to prevent petitioners from entering its refinery and from seizing its importations pursuant to Section 1508 of the TCCP by virtue of the Memorandum dated February 9, 2010.

Since the subject matter, the cause of action, the issues raised, and the reliefs prayed for are not the same, respondents are not guilty of forum shopping. Accordingly, the CTA did not err in denying the Motion to Cite respondents in Direct Contempt of Court.

WHEREFORE, the Petition is hereby DENIED. The assailed Decision dated June 11, 2012 and the Resolution dated August 28, 2012 of the Court of Tax Appeals in C.T.A. EB Case No. 744 are hereby AFFIRMED.

SO ORDERED.

Brion, (Acting Chairperson), Mendoza, Reyes,[*] and Leonen, JJ., concur.

[*] Per raffle dated November 10, 2014.

[1] Paz v. Atty. Sanchez, 533 Phil. 503, 510 (2006).

[2] Rollo, Volume I, pp. 404-450.

[3] Id. at 452-461; penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castafieda, Jr., Lovell R. Bautista, Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas.

[4] Id. at 463-unpaged.

[5] Id. at 485.

[6] Id. at unpagged-465.

[7] Id. at 409.

[8] Id. at 466-470.

[9] Id. at 471.

[10] Id. at 473.

[11] SEC. 1508. Authority of the Collector of Customs to Hold the Delivery or Release of Imported Articles. — Whenever any importer, except the government, has an outstanding and demandable account with the Bureau of Customs, the Collector shall hold the delivery of any article imported or consigned to such importer unless subsequently authorized by the Commissioner of Customs, and upon notice as in seizure cases, he may sell such importation or any portion thereof to cover the outstanding account of such importer; Provided, however, That at any time prior to the sale, the delinquent importer may settle his obligations with the Bureau of Customs, in which case the aforesaid articles may be delivered upon payment of the corresponding duties and taxes and compliance with all other legal requirements.

[12] Rollo, Volume I, p. 474.

[13] Id. at 410.

[14] Id. at 475-476.

[15] Id. at 477-543.

[16] Id. at 544-572.

[17] Id. at 413.

[18] Id. at 573-576.

[19] Id. at 577.

[20] Id. at 578-601.

[21] Id. at 599.

[22] Id. at 454.

[23] Id. at 623-643.

[24] Id. at 455.

[25] Rollo, Vol. III, pp. 2879-2893.

[26] Id. at 2836-2838.

[27] Id. at 1958-1962; penned by Acting Presiding Judge Eleuterio L. Bathan.

[28] Id. at 2071.

[29] Rollo, Vol. I, pp. 649-656; penned by Associate Justices Lovell R. Bautista, Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas.

[30] Id. at 654.

[31] Id.

[32] Id. at 655.

[33] Id.

[34] Id. at 657-675.

[35] Id. at 676-682.

[36] Id. at 683-718.

[37] Id. at 421.

[38] Rollo, Volume III, pp. 3031-3043.

[39] Id. at 3037.

[40] Id. at 3039.

[41] Id. at 3040.

[42] Id. at 3038.

[43] Id. at 3031.

[44] Id. at 3041.

[45] Id. at 3042-3043.

[46] Id. at 3044.

[47] Id. at 1848-1849.

[48] Id. at 1850-1851.

[49] Id. at 1851-1852.

[50] Id. at 1898.

[51] Sec. 5. Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed

or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[52] *Heirs of Marcelo Sotto v. Palicte*, G.R. No. 159691, February 17, 2014, 716 SCRA 175, 188.

[53] *Municipality of Taguig v. Court of Appeals*, 506 Phil. 567, 575 (2005).

[54] *Chua v. Metropolitan Bank & Trust Company*, 613 Phil. 143, 153 (2009).

[55] *Adao v. Attys. Docena and Acol, Jr.*, 564 Phil. 448, 452 (2007).

[56] *Rollo*, Volume I, p. 180.

[57] *Id.* at 208.

[58] *Id.* at 237-238.

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