



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

PILIPINAS SHELL PETROLEUM
 CORPORATION,

G.R. Nos. 218532-33

Petitioner,

Present:

- versus -

LEONEN, J., *Chairperson,*
 HERNANDO,
 INTING,
 DELOS SANTOS,
 LOPEZ, J., *JJ.*

COURT OF TAX APPEALS *EN*
BANC, COMMISSIONER OF
 CUSTOMS, COLLECTOR OF
 CUSTOMS OF THE PORT OF
 BATANGAS, BUREAU OF
 CUSTOMS, and the BUREAU OF
 INTERNAL REVENUE,

Promulgated:

Respondents.

April 28, 2021

X-----~~Mis-Proc-B-H~~-----X

DECISION

INTING, J.:

Before the Court is a Petition for *Certiorari* [with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction]¹ filed by Pilipinas Shell Petroleum Corporation (Shell) assailing the Court of Tax Appeals (CTA) *En Banc* Resolutions dated September 2, 2014² and April 8, 2015³ in CTA EB Nos. 1003 and 1007. In the assailed Resolutions, the CTA *En Banc* denied Shell's Motion to Suspend Proceedings and/or Defer Resolution⁴ (Motion to Suspend).

¹ *Rollo*, Vol. I, pp. 3-36.

² *Id.* at 48-50; penned by Associate Justice Ma. Belen M. Ringpis-Liban with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring.

³ *Id.* at 54-60. With separate concurring opinion by Presiding Justice Roman G. Del Rosario, *id.* at 61-63.

⁴ *Id.* at 65-70.

The Antecedents

Shell imports fuel products such as catalytic cracked gasoline (CCG), light catalytic cracked gasoline (LCCG), and alkylate “to be used and blended with other petroleum substances in order to produce Clean Air Act-⁵ and [Philippine National Standards]-compliant x x x finished grade motor gasoline.”⁶

The present petition refers to two separate proceedings before the CTA: *First*, CTA EB Case Nos. 1003 and 1007 on the taxability of Shell’s CCG/LCCG importations (CCG/LCCG Case); and *second*, CTA [Division] Case No. 8535 on the taxability of Shell’s alkylate importations (Alkylate Case). When the CCG/LCCG Case reached the CTA *En Banc*,⁷ the Alkylate Case remained pending before the CTA First Division.⁸

In the CCG/LCCG Case before the CTA *En Banc*, Shell filed a Motion to Suspend with the following prayer:

WHEREFORE, it is respectfully prayed that the Honorable Court *En Banc* DEFER resolution of the instant case, AWAIT the resolution and elevation to the Honorable Court *En Banc* of the Decision in CTA Case No. 8535, and thereafter, CONSOLIDATE both cases for a joint resolution.⁹

According to Shell, the two cases involved “the very same issue of whether imported goods not intended for domestic sale or consumption, but are mere raw materials not for sale to the public but for blending to produce finished-grade motor gasoline is subject to excise taxes both upon entry and withdrawal x x x.”¹⁰ Thus, they called to suspend the CTA *En Banc* proceedings in the CCG/LCCG Case until the Alkylate Case is resolved at the division level and likewise reaches the *banc* “for consistency x x x so as not to preempt the deliberations and decision of

⁵ Republic Act No. (RA) 8749.

⁶ *Rollo*, Vol. 1, p. 8.

⁷ *Id.* at 16. Shell filed a Petition for Review dated May 15, 2013 before the Court of Tax Appeals (CTA) *En Banc* docketed as CTA EB Case No. 1007.

⁸ *Id.* at 18. Shell filed an Amended Petition for Review dated October 5, 2012 before the CTA First Division docketed as CTA Case No. 8535.

⁹ *Id.* at 69.

¹⁰ *Id.* at 66.

the [CTA First Division Associate Justices] who are also members of the [CTA] *En Banc*.”¹¹

In the assailed Resolution,¹² the CTA *En Banc* denied Shell’s Motion to Suspend for lack of merit and the subsequent Motion for Reconsideration.¹³ Later on, the CTA *En Banc* explained as follows: *First*, the suspension of a civil case on the ground of a prejudicial question may be allowed only on account of a related and pending criminal proceeding. *Second*, Shell should have availed [itself of] the remedy of consolidation under Rule 31¹⁴ of the Rules of Court. Shell’s failure to seek for consolidation is an implied admission that the two cases involve different evidentiary considerations.¹⁵ *Third*, Shell did not present evidence to show that the CTA First Division justices hearing/trying the Alkylate Case “would be so prejudiced should the [CCG/LCCG Case] be resolved first.”¹⁶ Thus, their contention is purely speculative.

Hence, Shell filed the present petition.

Issue

The lone issue for the Court’s resolution is whether the CTA *En Banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to suspend the CCG/LCCG Case and await for the CTA First Division’s resolution of the Alkylate Case.

In its Comment,¹⁷ the Office of the Solicitor General (OSG), representing respondents¹⁸ avers that the CTA *En Banc* has since decided

¹¹ *Id.* at 67.

¹² *Id.* at 48-50.

¹³ *Id.* at 54-60.

¹⁴ Section 1, Rule 31 of the Rules of Court provides:

SECTION 1. *Consolidation.* — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

¹⁵ *Rollo*, Vol. I, p. 58.

¹⁶ *Id.*

¹⁷ *Rollo*, Vol. II, pp. 1292-1311.

¹⁸ The respondents in this case are the following: the Court of Tax Appeals *En Banc*, Commissioner of Customs, Collector of Customs of the Port of Batangas, Bureau of Customs, and the Bureau of Internal Revenue.

the CCG/LCCG Case on the merits. Thus, the present petition has become moot and academic.¹⁹

The Court's Ruling

The present petition should be dismissed on the ground of mootness.

An issue's mootness prevents the Court from exercising its power of judicial review because it no longer presents a justiciable controversy. It would be a pointless endeavor for the Court to proceed to resolve a case where "the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced."²⁰

To recall, Shell mainly prayed for the suspension of the proceedings in the CCG/LCCG Case until the CTA First Division resolved the Alkylate Case.

However, as there was no legal impediment or court directive²¹ preventing the CTA *En Banc* to do so, it continued its proceedings in the CCG/LCCG Case (CTA EB Nos. 1003 and 1007) and resolved the issues therein in an Amended Decision²² dated September 28, 2015. Subsequently, the parties elevated the case to the Court *via* their respective petitions for review on *certiorari*, docketed as G.R. Nos. 227087 and 227104 which are now pending before the Second Division.

It is clear that the supervening events mooted the issue of whether or not the CCG/LCCG Case should be suspended. A ruling granting the

¹⁹ *Rollo*, Vol. II, pp. 1305-1306.

²⁰ *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, 728 Phil. 535, 540 (2014), citing *Phil. Savings Bank, et al. v. Senate Impeachment Court, et al.*, 699 Phil. 34, 36 (2012), further citing *Osmeña III v. Social Security System of the Philippines*, 559 Phil. 723, 735 (2007).

²¹ Section 7, Rule 65 of the Rules of Court provides:

SEC. 7. *Expediting proceedings; injunctive relief.* — x x x The [filing of a] petition [under Rule 65] shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding in the case.

²² *Rollo*, Vol. II, pp. 1314-1355; penned by Associate Justice Caesar A. Casanova with CTA Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, concurring; and Associate Justice Ma. Belen M. Ringpis-Liban, with concurring and dissenting opinion.

present petition would no longer serve any purpose because there is nothing left in the court *a quo* to suspend.

In any case, the CTA *En Banc* did not commit grave abuse of discretion when it refused to suspend the CCG/LCCG case proceedings.

The relief sought by Shell (*i.e.*, suspension/deferment of proceedings) is in the nature of a *quasi-consolidation* “[w]here all except one of several actions are stayed until one is tried x x x This is not actually consolidation, but is referred to as such.”²³ Notably, consolidation or severance²⁴ is subject to the *sound discretion of the court* wherein the proceedings remain pending.²⁵ Cases are consolidated “to obtain justice with the least expense and vexation to the litigants x x x to avoid multiplicity of suits, guard against oppression or abuse, prevent delays, and save the litigants unnecessary acts and expense.”²⁶ A court may opt not to consolidate if doing so would only prejudice any party or delay/complicate the proceedings.²⁷ An order for consolidation that defeats its very purpose amounts to grave abuse.²⁸

Shell insists that the CCG/LCCG and Alkylate cases involve the same underlying issue.²⁹ Thus, the non-suspension/deferment of the CCG/LCCG Case amounts to grave abuse as it would result in a pre-judgment of the Alkylate Case, *such that a CTA En Banc ruling on the CCG/LCCG case would only influence the manner by which the CTA First Division would resolve the Alkylate Case*, should the former be decided ahead of the latter.

These claims are speculative and do not constitute grounds for consolidation as discussed above.

²³ *Rep. of the Phils. v. Sandiganbayan (4th Div.), et al.*, 678 Phil. 358, 403 (2011), citing 1 C.J.S. § 107, p. 1341; Wright and Miller, *Federal Practice and Procedure: Civil 2d* § 2382.

²⁴ *Id.* at 402, citing therein the provision on Consolidation or Severance under Rule 31 of the Rules of Court.

²⁵ See *Deutsche Bank AG v. Court of Appeals, et al.*, 683 Phil. 80 (2012).

²⁶ See *Sps. De Vera v. Hon. Agloro*, 489 Phil. 185, 198 (2005), citing *Raymundo, et al. v. Felipe*, 149 Phil. 716, 732 (1971).

²⁷ *Id.*

²⁸ See *PNB v. Gotesco Tyan Ming Dev't., Inc.*, 606 Phil. 806 (2009).

²⁹ *Rollo*, Vol. I, p. 23.

The law³⁰ clearly provides that the CTA shall consist of nine Associate Justices,³¹ who shall sit *en banc* or in division.³² The Presiding Justice and the two most Senior Associate Justices, all of whom are incumbent, shall serve as chairperson of each of the three Divisions. The other three incumbent Associate Justices and the three additional Associate Justices shall serve as members of the Divisions.³³

That the Associate Justices in the First Division also participate in the *En Banc* deliberations cannot be seen as an impairment of their

³⁰ RA 1125, otherwise known as the "Act Creating the Court of Tax Appeals" [June 16, 1954], as amended by RA 9503 [June 12, 2008].

³¹ Section 1, RA 1125, as amended by RA 9503, provides:

SECTION 1. Section 1 of Republic Act No. 1125, as amended, is hereby further amended to read as follows:

"SEC. 1. *Court; Justices, Qualifications; Salary; Tenure.* — There is hereby created a Court of Tax Appeals (CTA) which shall be of the same level as the Court of Appeals, possessing all the inherent powers of a Court of Justice, and shall consist of a Presiding Justice and eight (8) Associate Justices. The incumbent Presiding Judge and Associate Judges shall continue in office and bear the new titles of Presiding Justice and Associate Justices. The Presiding Justice and the two (2) most Senior Associate Justices, all of whom are incumbent, shall serve as chairmen of the three (3) Divisions. The other three (3) incumbent Associate Justices and the three (3) additional Associate Justices shall serve as members of the Divisions. The additional three (3) Justices as provided herein and the succeeding members of the Court shall be appointed by the President upon nomination by the Judicial and Bar Council. The Presiding Justice shall be so designated in his appointment, and the Associate Justices shall have precedence according to the date of their respective appointments, or when the appointments of two (2) or more of them shall bear the same date, according to the order in which their appointments were issued by the President. They shall have the same qualifications, rank, category, salary, emoluments and other privileges, be subject to the same inhibitions and disqualifications, and enjoy the same retirement and other benefits as those provided for under existing laws for the Presiding Justice and Associate Justices of the Court of Appeals.

"Whenever the salaries of the Presiding Justice and the Associate Justices of the Court of Appeals are increased, such increases in salaries shall be deemed correspondingly extended to and enjoyed by the Presiding Justice and Associate Justices of the CTA.

"The Presiding Justice and Associate Justices shall hold office during good behavior, until they reach the age of seventy (70), or become incapacitated to discharge the duties of their office, unless sooner removed for the same causes and in the same manner provided by law for members of the judiciary of equivalent rank."

³² Section 2, RA 1125, as amended by RA 9503, provides:

SECTION 2. Section 2 of the same Act, as amended, is hereby further amended to read as follows:

"SEC. 2. *Sitting En Banc or Division; Quorum; Proceedings.* — The CTA may sit *en banc* or in three (3) Divisions, each Division consisting of three (3) Justices.

"Five (5) Justices shall constitute a quorum for sessions *en banc* and two (2) Justices for sessions of a Division. *Provided*, That when the required quorum cannot be constituted due to any vacancy, disqualification, inhibition, disability, or any other lawful cause, the Presiding Justice shall designate any Justice of other Divisions of the Court to sit temporarily therein.

"The affirmative votes of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division but a simple majority of the Justices

independence in deciding a case pending before the division. That the members of the CTA First Division are also members of the CTA *En Banc* is merely inherent in the CTA's organizational structure and composition. To be sure, the CTA Division does not lose jurisdiction over a case if another case with similar issues/parties is separately heard and/or decided upon by the CTA *En Banc*.


Parenthetically, it is not uncommon for a taxpayer to have simultaneous cases pending before the CTA. Verily, these cases may involve the same parties (*e.g.*, taxpayer and tax authorities), same tax type (*e.g.*, excise tax), and/or similar legal questions. However, if the taxes involved clearly emanate from different taxable periods, articles/transactions, assessment/collection cases, these are separate and distinct causes of action, which may be tried and heard independently. Thus, to direct the tax court to suspend multiple proceedings would only result in delays. Certainly, there is no due process violation if the court rules against consolidation or suspension of proceedings, especially if the taxpayer appears to have only sought this remedy to ensure that he obtains the desired outcome in each pending case.

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division Level."

³³ Section 1, RA 1125, as amended by RA 9503.



RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

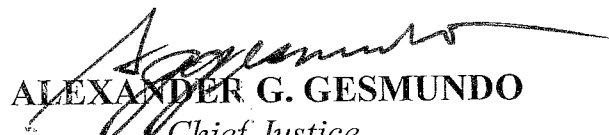
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice