REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ASIA INTERNATIONAL AUCTIONEERS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 7003

Members:

CASTAÑEDA, JR., *Chairman*
UY, and
PALANCA-ENRIQUEZ, JJ

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 2 1 2004

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RESOLUTION

Submitted for resolution are the following motions:

1. respondent's **"Motion to Dismiss"** filed on June 28, 2004, on the ground that the petition was filed prematurely as the Commissioner has not yet acted upon the protest of the petitioner, and petitioner's **Opposition to Motion to Dismiss** filed on August 5, 2004;

2. petitioner's **"Motion to Defer Proceedings Pending Resolution by the Supreme Court of G.R. No. 163445"** filed on August 5, 2004 on the ground that the principal issues raised in this present petition have also been raised in the petition presented for resolution with the Honorable Supreme Court in G.R. No. 163445;

3. petitioner's **"Motion for Leave to File and Admit First Amended Complaint"** filed on August 16, 2004;

4. petitioner's **"Urgent Motion for Issuance of a Temporary**

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Restraining Order and Writ of Preliminary Injunction, with Motion to Lift Warrant of Garnishment Issued by Respondent" filed on August 27, 2004; and respondent's **"Opposition"** thereto filed on September 2, 2004;

5. Office of the Solicitor General's **"Manifestation and Motion"** filed on September 8, 2004 and **"Addendum to the Manifestation and Motion dated September 8, 2004"** filed on October 6, 2004.

A brief narration of the history of the case is a follows:

Petitioner is a corporation organized under the laws of the Philippines with principal place of business as Bldg. 1492, Lower Mau Camp, Argonaut Highway, Subic Bay Free Port Zone, Olongapo City. Its principal business concerns the sale, through public auction, of imported motor vehicles, heavy equipment, construction equipment and other items of commerce (pars. 6 & 9, Petition for Review).

On separate dates, respondent issued various administrative regulations and circulars, imposing guidelines on the taxation of business enterprises within the ECOZONES of Subic, Clark, John Hay and Poro Point and other Special Economic Zones under PEZA, more particularly those enterprises connected with the sale of imported vehicles through public auction. The administrative circulars in effect imposed excise and value-added taxes against petitioner's income received from its conducted auction sales.

Aggrieved by such issuances, petitioner, together with Subic Bay Motors Corporation, filed on June 18, 2003, before the Regional Trial Court of Olongopo City, Branch 74, a civil case docketed as Civil Case No. 275-0-2003, to declare unconstitutional and ultra vires the following administrative issuances of herein respondent:

1. Revenue Regulations 1-95 dated January 24, 1995;
2. Revenue Regulations 12-97 dated August 7, 1997;

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3. Revenue Regulations 16-99 dated September 27, 1999;
4. Revenue Memorandum Circular No. 31-2003 dated June 3, 2003; and
5. Revenue Memorandum Circular No. 32-2003 dated June 5, 2003.

admittedly used by herein respondent as his bases for the imposition and assessment of the questioned excise and value-added taxes against petitioner.

Meanwhile, a 10-day Preliminary Notice dated July 28, 2003 was sent by respondent to herein petitioner assessing it the total amount of P70,776,710.00 representing unpaid value-added tax for its June 6, 7 & 8, 2003 auction sales.

Pending the resolution of the civil case on the merits, petitioner prayed for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction to enjoin the respondent from proceeding with the imposition of the excise and value-added taxes. The lower court granted the said prayer in its Order dated August 1, 2003.

Aggrieved by the said Order, herein respondent elevated the case to the Court of Appeals by way of a Petition for Certiorari under Rule 65 of the Rules of Court and, subsequently, in a Resolution promulgated on March 31, 2004, the Court of Appeals declared the lower court as having no jurisdiction over the case and annulled the Order of August 1, 2003. Petitioner, therein complainant, then went up to the Supreme Court, raising the principal issue of "which court has jurisdiction to hear the challenge on the lack of power and unconstitutionality and ultra vires nature of the action of the respondent". The case was docketed as G.R. No. 163445.

On October 7, 2003, a Preliminary Assessment Notice was issued by respondent assessing petitioner the amount of P73,508,800.00 as value-added taxes for its auction sales conducted on June 6, 7, & 8, 2003. On November 5, 2003, a Formal Letter of Demand was issued assessing petitioner the amount of P75,393,000.00 for the same tax and period covered, the difference being attributed to the interest collectible per annum.

Finally, in a letter dated January 26, 2004, petitioner was informed that the Letter of Demand and Assessment Notice previously sent were superseded by the 10-day Preliminary Assessment Notice dated January 7, 2004. For all the above-mentioned assessments, petitioner dutifully submitted its protest-letter.

Consequently, on May 11, 2004, respondent issued a Final Assessment Notice, admittedly received by petitioner on May 18, 2004, assessing petitioner the amounts of P86,824,740.00 for deficiency excise tax and P89,457,750.00 for deficiency value-added tax due from its auction sales conducted on June 6, 7, & 8, 2003.

On May 24, 2004, petitioner filed, through registered mail, its protest letter questioning the validity of the said Final Assessment Notice.

On June 17, 2004, without waiting for any reply from the respondent, petitioner filed the instant "Petition for Review 'Ad Cautela'" with this Court.

A "Motion to Dismiss" was filed by respondent on June 28, 2004. On August 5, 2004, petitioner filed its "Opposition to Motion to Dismiss".

On August 16, 2004, petitioner filed a "Motion for Leave to File and Admit First Amended Complaint" alleging that the amendment was merely to include in the heading of the Petition for Review the title "Complaint to Declare Unconstitutional, Void, An Ultra Vires Act Revenue Regulations No. 1-95 dated January 24, 1995; No. 12-97 dated August 7, 1997 and No. 16-99 dated September 27, 1999; Revenue Memorandum Circular No. 31-2003 dated June 3, 2003 and No. 32-2003 dated June 5, 2003," with application for a Writ of Preliminary Injuction.

On August 30, 2004, respondent filed its "Opposition".

On August 27, 2004, petitioner filed an "Urgent Motion for Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction, with Motion to Lift Warrant of Garnishment Issued by the Respondent". This motion was a result of the

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Warrant of Garnishment issued by herein respondent against petitioner and served against the several bank deposit accounts of petitioner. On the other hand, a "Manifestation" dated September 6, 2004 was filed by respondent with regard to the Order issued on September 2, 2004 by the Regional Trial Court of Olongapo City, Branch 72, in Civil Case No. 381-0-2000 wherein the banks served with the Warrant of Garnishment were "ordered to immediately honor and pay all incoming checks against the accounts maintained by herein Petitioner, Asia International Auctioneers, Inc., with the said banks and to allow withdrawals of monies from the said accounts." (Annex 1, Respondent's Manifestation)

On September 9, 2004, herein respondent filed his "Manifestation and Motion" averring that petitioner's act in filing this instant petition is a clear case of forum shopping, as there is another action involving the same parties pending in the Supreme Court docketed as G.R. No. 163445. Respondent argues that the pendency of G.R. No. 163445 is another serious complication affecting the propriety of the present petition. The question now is – may this Court assume jurisdiction over the present petition without preempting the ruling of the Supreme Court on the issue?

In its Resolution dated September 15, 2004, this Court ordered petitioner and Subic Bay Motors Corporation (petitioner in CTA Case No. 7042) to comment on the above-mentioned Manifestations and to submit the required pleadings.

On September 22, 2004, respondent filed his "Comment (Ad Cautelam)". An "Addemdum to the OSG's Manifestation and Motion dated September 8, 2004" was likewise filed by respondent on October 6, 2004.

Petitioner filed on October 1, 2004 its "Consolidated Compliance with the Resolution dated September 16, 2004 with Submission of Additional Arguments in Support of Petitioner's Application for a Temporary Restraining Order and a Writ of

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Preliminary Injunction, and Motion to Lift Warrants of Garnishment". Respondent filed its "Reply" thereto on October 6, 2004.

This Court is now tasked with resolving the several motions filed by the parties. However, the Court finds it necessary to resolve first the "Motion to Dismiss" filed by respondent as its resolution would render the other motions moot and academic.

In his "Motion to Dismiss", respondent contends that this Court has no jurisdiction to take cognizance of this case on the ground that the petition was filed prematurely as respondent has not yet decided petitioner's protest against the assessment, invoking Section 7 of R.A. No. 9282.

On the other hand, in its "Opposition to Motion to Dismiss" dated August 5, 2004, petitioner avers:

> *"4. To this notice dated January 7, 2003, the petitioner reiterated its protest on January 20, 2004 appended Attachment C. This letter was mistakenly dated December 5, 2003 but the contents refer to the 2004 January notice and corrected in handwriting. This protest was not resolved by the respondent, and from the filing of the protest since October 2003 to the filing of the petition in the present case, more than six months elapsed already, hence the filing of the petition in this case is well within the allowed and prescribed period of time under the National Internal Revenue Code.*
>
> *5. The sending of the letter dated May 24, 2004, please see Attach N of Petition, refers to a Formal Assessment Notice and not to the Final Assessment Notice, and at any rate, it was merely a reiteration of the protest long time ago filed with the hope that it will be resolved before the six (6) months period expires. (Docket, p. 224)"*

The motion is meritorious.

Section 7 of R.A. No. 9282, An Act Expanding the Jurisdiction of the Court of Tax

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Appeals, provides in part:

"**Section 7.** *Jurisdiction.* – The CTA shall exercise:

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

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

x x x x x x x x x"

Under the aforequoted provision, it is clear that what is appealable to this Court is the decision or inaction by the Commissioner of Internal Revenue. In the case of Commissioner of Internal Revenue vs. Villa (22 SCRA 3) the Honorable Supreme Court ruled:

> "Note that the law uses the word "decisions" not assessments, thus, further indicating the legislative intention to subject to judicial review the decision of the Commissioner on the protest against the assessment **but not the assessment itself."** (Emphasis supplied)

Corollary thereto, Section 228 of the 1997 Tax Code provides:

"**Section 228.** *Protesting an Assessment.* – x x x

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(a) x x x
(b) x x x
(c) x x x
(d) x x x
(e) x x x

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a **request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment** in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (Emphasis supplied)

When petitioner received the Final Assessment Notice on May 18, 2004, it had a period of thirty days within which to file its administrative protest with the respondent. It filed its protest on May 24, 2004. However, without waiting for a reply from the respondent, petitioner instituted the instant petition with this Court on June 17, 2004 or barely 30 days after it filed its protest. Section 228 of the 1997 Tax Code is explicit that "within sixty (60) days from filing of protest, all relevant supporting documents shall

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have been submitted; otherwise, the assessment shall become final". Thus, from the filing of its protest on May 24, 2004, petitioner still had a period of sixty days within which to submit all relevant documents to support its claim. From the said protest and documents submitted, the respondent may deny either in whole or in part petitioner's arguments. Subsequently, from the lapse of the one hundred eighty (180)-day period allowed by the last paragraph of Section 228 of the 1997 Tax Code, the petitioner or taxpayer adversely affected by the inaction has a period of thirty days within which to elevate its case to this Court. It is from the lapse of this 180-day period that the Court may take cognizance of the case. It is a doctrinal rule that when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says. In other words, when the law is clear, there is nothing for the courts to do but to apply it. The petitioner should have given respondent an opportunity to resolve its protest first before elevating this petition with this Court.

Unmistakably, the law provides a period for the petitioner to comply and this period must be observed. The petitioner filed its protest on May 24, 2004 and filed the instant petition on June 17, 2004 or only 24 days after filing its protest-letter. Clearly, petitioner failed to comply with the periods mandated by law within which to protest an assessment and to give respondent the opportunity to decide on the matter presented before it. As we have consistently adhered to the principle that courts cannot grant relief where the parties failed to exhaust all the administrative remedies available, the present petition must perforce be dismissed on the ground of prematurity.

In view of the above conclusion thus reached, the Court finds no necessity to resolve the other motions, for being moot and academic.

WHEREFORE, premises considered, respondent's "Motion to Dismiss" is hereby

GRANTED. Accordingly, the present Petition for Review is **DISMISSED** without prejudice.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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