REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PETRON CORPORATION,
Petitioners,

CTA EB NO. 1499
(CTA Case No. 8544)

- versus -

Present:

DEL ROSARIO, *PJ*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE, COMMISSIONER OF CUSTOMS and COLLECTOR OF CUSTOMS (PORT OF LIMAY, BATAAN),
Respondents.

Promulgated:

JUN 14 2018 9:42 a.m.

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DECISION

Fabon-Victorino, J.:

Assailed in this *Petition for Review*[1] filed by Petron Corporation on August 23, 2016 are: (1) the Decision[2] dated May 17, 2016 rendered by the Court in Division in CTA Case No. 8544, denying its *Petition for Review* and *Supplemental Petition for Review* on jurisdictional ground; and (2) the Resolution[3] dated July 21, 2016, denying its *Motion for Reconsideration* of the adverse Decision.

Petitioner prays that the assailed Decision and Resolution of the Court in Division be reversed and set aside

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[1] En Banc docket, pp. 37-73.
[2] En Banc docket, pp. 84-101.
[3] En Banc docket, pp. 102-108.

and declared the Court of Tax Appeals (CTA) to have jurisdiction over its Petition for Review and Supplemental Petition for Review filed with the Court in Division, and that the case be remanded to the Court in Division for the determination of the case on the merits.

The factual antecedents:

Petitioner is a domestic corporation engaged in the business of manufacturing and marketing petroleum products, with principal office located at San Miguel Corporation Head Office Complex, 40 San Miguel Avenue, 1550 Mandaluyong City.[4]

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue, a government agency tasked to, among others, assess and collect all national internal revenue taxes and charges, and enforce all forfeitures, penalties and fines connected therewith.[5]

The other respondent, the Commissioner of Customs (COC) heads the Bureau of Customs (BOC), the government agency mandated to collect customs duties, taxes and other charges on imported goods on behalf of respondent CIR pursuant to Section 12 (a) of the National Internal Revenue Code (NIRC) of 1997, as amended.[6]

Respondent Collector of Customs is the District Collector at the Port of Limay, Bataan tasked to collect customs duties, taxes and other charges on imported goods on behalf of the CIR pursuant to Section 12(a) of the NIRC of 1997, as amended.[7]

In compliance with Republic Act (RA) No. 8749, otherwise known as the Clear Air Act of 1999, and RA No. 9367, also known as the Biofuels Act of 2006, petitioner imports on various dates alkylate as raw material or blending component for its manufacture of ethanol-blended motor gasoline.

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[4] Joint Stipulation of Facts and Issues (JSFI), Rollo, p.1562.
[5] JSFI, Rollo, p. 1562.
[6] JSFI, Rollo, p. 1563.
[7] JSFI, Rollo, p. 1563.

For the period January 2009 to August 2011, as well as for the month of April 2012, petitioner made several importations of alkylate for which respondent CIR issued Authorities to Release Imported Goods (ATRIGs), categorically stating that petitioner's importation of alkylate is exempt from the payment of the excise tax as it was *"not among those articles enumerated under Title VI of the NIRC of 1997"*. The tenor of the said declaration was modified with respect to petitioner's alkylate importations covering the period September 2011 to May 2012 (excluding April 2012), as respondent CIR inserted a reservation for all ATRIGs issued to it, stating that:

> This is without prejudice to the collection of the corresponding excise taxes, penalties and interest depending on the final resolution of the Office of the Commissioner on the issue of whether this item is subject to the excise taxes under the National Internal Revenue Code of 1997, as amended.

On June 2012, petitioner imported 12,802,660 liters or 79,231 barrels of alkylate and paid value-added tax (VAT) in the total amount of ₱41,657,533.00, as evidenced by Import Entry and Internal Revenue Declaration (IEIRD) No. SN 122406532. However, upon the instruction of respondent COC, the said importation was subjected by respondent Collector of Customs of Port of Limay, Bataan to excise taxes of ₱4.35 per liter, or in the aggregate amount of ₱55,691,571.00, and consequently, to an additional VAT of 12% on the imposed excise tax in the amount of ₱6,682,989.00, *per* Final Computation. The imposition of the excise tax was allegedly pursuant to Customs Memorandum Circular (CMC) No. 164-2012 dated July 18, 2012, implementing the Letter dated June 29, 2012 issued by respondent CIR, which reads as follows:

> Alkylate which is a product of distillation similar to that of naphta, is subject to excise tax under Section 148(e) of the National Internal Revenue Code (NIRC) of 1997.

This prompted petitioner to file a *Petition for Review* before the Court in Division on August 22, 2016, questioning the propriety of CMC No. 164-2012 which imposed excise tax on its alkylate importation.

On October 5, 2012, respondent CIR filed a *Motion to Dismiss*[8] on the ground that the Court has no jurisdiction to take cognizance of the case.

On November 15, 2012, the Court in Division granted respondent CIR's motion and dismissed petitioner's *Petition for Review* for lack of jurisdiction and prematurity[9].

However, at the instance of petitioner, the Court in Division reversed itself in the Resolution[10] of February 13, 2013 and gave due course to the *Petition for Review*.

Aggrieved, respondent CIR moved for reconsideration[11] but the same was denied in the Resolution[12] dated May 8, 2018.

On July 15, 2013, the Court in Division was furnished with a copy of respondent CIR's *Petition for Certiorari*[13] filed with the Supreme Court, assailing the Court in Division's Resolutions dated February 13, 2013 and May 8, 2013.

On August 1, 2013, respondent CIR filed with the Court in Division his *Answer ad Cautelam*[14] reiterating his position that: (1) the Court has no jurisdiction to entertain the Petition for Review; (2) the absence of assessment that may be subject to review; (3) non-exhaustion of available administrative remedies on the part of petitioner, *i.e.*, appeal to the commissioner of customs; and (4) petitioner is liable to pay excise tax on its alkylate importations.

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[8] Rollo, pp. 174-189.
[9] Rollo, pp. 350-365.
[10] Rollo, pp. 553-572.
[11] Rollo, pp. 398-434.
[12] Rollo, pp. 627-640.
[13] Rollo, pp. 665-737.
[14] Rollo, pp. 738-764.

On January 28, 2014, petitioner filed a *Motion for Leave of Court to File Attached Supplemental Petition for Review*, [15] which the Court in Division granted in the Resolution[16] dated March 26, 2014. In its *Supplemental Petition for Review*, petitioner prayed that it be refunded the total amount of ₱55,691,571.00, representing excise taxes it paid under IEIRD No. SN 122406532.

On April 25, 2014, respondent CIR filed his *Supplemental Answer ad Cautelam*[17].

Although furnished with a copy of respondent's CIR's Petition for Certiorari filed with the Supreme Court entitled Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation and docketed as G.R. No. 207843, the Court in Division proceeded with the trial allowing the parties to present their respective evidence in support of their cases as there was no restraining order (TRO) or injunction issued by the Supreme Court enjoining it from hearing the case.

On July 15, 2015, the Supreme Court issued the Decision in the above-mentioned Certiorari Case disposing it as follows:

> **WHEREFORE**, the petition is GRANTED. The Resolutions dated February 13, 2013 and May 8, 2013 of the Court of Tax Appeals (CTA, Second Division in CTA Case No. 8544 are hereby **REVERSED** and **SET ASIDE**. The petition for review filed by private respondent Petron Corporation before the CTA is **DISMISSED** for lack of jurisdiction and prematurity.
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> **SO ORDERED**.

A copy of the foregoing Decision was received by the Court in Division on October 2, 2015[18].

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[15] Rollo, pp. 897-947.
[16] Rollo, pp. 1009-1014.
[17] Rollo, pp. 1048-1066.
[18] *Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation*, G.R. No. 207843, July 15, 2015.

On May 17, 2016, the Court in Division issued the assailed Decision, the decretal portion of which reads:

> **WHEREFORE**, in view thereof, the Petition for Review and the Supplemental Petition for Review are **DENIED**, for lack of jurisdiction.
>
> **SO ORDERED**.

Unfazed, petitioner moved for the reconsideration of the adverse decision but the same was denied in the equally assailed Resolution of July 21, 2016.

On August 23, 2016, petitioner filed the instant *Petition for Review* raising the lone issue, to wit:

> WHETHER THE HONORABLE COURT OF TAX APPEALS HAS JURISDICTION OVER THE PETITION FOR REVIEW AND SUPPLEMENTAL PETITION FOR REVIEW.

Petitioner submits that the core issue in this case is the propriety or correctness of respondent CIR's interpretation and application of Section 148 (e) of the 1997 NIRC (as embodied in CMC No. 164-2012) concerning the imposition of excise tax on petitioner's importation of alkylate. According to petitioner, the CIR's power to interpret laws, subject to review by the Secretary of Finance being the head of the department which oversees the BIR, falls under the exclusive appellate jurisdiction of the CTA under "other matters" arising under the Tax Code or other laws or portions thereof administered by the BIR. Allegedly, this stance is in accord with the ruling in *Philam* case where the Supreme Court clarified and settled that it is the CTA that has the power to take cognizance of appeals questioning a ruling or issuance of the CIR and upheld by the Secretary of Finance.

While generally, no recourse to courts can be had until all administrative remedies have been exhausted, petitioner submits that this rule is not applicable where the challenged administrative act is patently illegal, amounting to lack or in excess of jurisdiction and where the question(s) involved is essentially judicial. Petitioner opines that its immediate resort to the CTA is justified under attendant circumstances as an exception to the rule on non-exhaustion of administrative remedies. The *petition* before the CTA clearly calls for a determination of the proper interpretation of the law, particularly, whether alkylate is an article subject to excise tax as contemplated under Section 148 of the 1997 NIRC, hence, purely legal; the collection of excise taxes on the importation of alkylate is patently illegal in the absence of any provision in the 1997 NIRC subjecting the importation of alkylate to excise taxes; judicial intervention is extremely urgent as the imposition of excise taxes on alkylate will cause great irreparable damage to it; and that its *Petition for Review* was filed for lack of any other plain, speedy and adequate remedy.

Petitioner likewise contends that an assessment is not a condition precedent before the CTA can acquire jurisdiction over an appeal questioning a ruling, regulation or issuance of respondent CIR. Petitioner finds erroneous the dismissal of its *Petition for Review* and *Supplemental Petition for Review* on the alleged absence of a tax assessment in this case in order for the Court in Division to exercise its *Certiorari* powers. Petitioner however asserts that it is not invoking in its *Petition for Review* the *certiorari* powers of the CTA. The case before the Court in Division is an appeal from the CIR's exercise of power to interpret tax laws. In any event, the final assessment and demand to collect taxes are already indicated in the Final Computation of respondent Collector of Customs written at the back page of the IEIRD. This constitutes the final assessment imposing excise tax on its importation of alkylate, says petitioner.

Lastly, petitioner contends that the *Supplemental Petition for Review* is not an initiatory pleading but just an extension of the original relief it sought. Upon filing of the original *Petition for Review* questioning the propriety of the imposition of excise tax on alkylate, petitioner had to pay the amount of ₱545,851.53 in view of its prayer to suspend collection of the total amount of ₱62,374,560.00 in excise tax and value-added tax. However, when its prayer for suspension of collection of taxes was denied, it had to pay the total amount of ₱62,374,560.00 and had to file a judicial claim for refund of the erroneously-paid excise tax by way of a *Motion to Admit Supplemental Petition for Review*. Petitioner believes that additional docket fee is not required as it was not even hinted in the Resolution dated March 26, 2014 which ordered the admission of its *Supplemental Petition*. Nevertheless, petitioner is amenable to pay the necessary docket fees should the Court deems it a requirement for acquiring jurisdiction over its *Petition for Review* and *Supplemental Petition for Review*.

By way of *Comment*,[19] respondent CIR maintains that the Court is without jurisdiction over the instant case. For him, the core issue in the present case is his interpretation of Section 148(e) of the 1997 NIRC, as embodied in his Letter dated June 29, 2012. Pursuant to Section 4 of the NIRC, any interpretation he made is subject to the review of the Secretary of Finance and ultimately, of the regular courts. In the present case, petitioner never questioned or appealed his interpretation of the cited provision before the Secretary of Finance.

Respondent CIR also argues that the *Philam* case is not in all fours with the present case. In *Philam* case, there was a ruling or issuance that was upheld by the Secretary of Finance which is not obtaining in the present case. Under the doctrine of exhaustion of administrative remedies, an administrative decision must first be appealed to the administrative superiors up to the highest level before it may be elevated to a court of justice for review. The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. The hurried recourse of petitioner to the Court in Division deprived him the opportunity to fully exercise his function to correct, modify or affirm the findings of his subordinates.

Likewise, CMC No. 164-2012 was issued by the COC in accordance with his quasi-legislative power. The COC's issuance is likewise subject to the review of Secretary of

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[19] En Banc docket, pp. 1016-1026.

Finance in accordance with Section 608 of the Tariff and Customs Code of the Philippines (TCCP).

In its *Reply*[20], petitioner reiterates that the obtaining circumstances of the instant case warrant immediate resort to the CTA. Petitioner theorizes that the doctrine of exhaustion of administrative remedies merely calls for resort to the appropriate administrative authorities first for the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. While the said doctrine is encouraged for practical consideration, the same is not cast in stone and should not be used to frustrate the service of justice to the aggrieved parties.

Petitioner insists that the CTA is the proper forum to appeal CIR's exercise of power to interpret tax laws under Section 4 of the 1997 NIRC subject to prior review by the Secretary of Finance. Citing the case of *Banco de Oro et. al. vs. Republic of the Philippines et. al.*,[21] petitioner claims that the Supreme Court already ruled with finality that the CTA has jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of respondent CIR.

On January 11, 2017, the Court *En Banc* gave due course to the instant *Petition for Review* requiring the parties to submit their respective Memoranda within thirty (30) days from notice.[22]

In view of respondents' failure to file their Memorandum despite several extensions granted, respondents were deemed to have waived their right to file their Memorandum and the instant case was deemed submitted for decision on June 21, 2017.[23]

Significantly, this Court, on May 3, 2018, was furnished with a copy of the Resolution dated February 14, 2018, issued by the Supreme Court in the Certiorari Case filed

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[20] En Banc docket, pp. 1028-1035.
[21] G.R. No. 198756, August 16, 2016.
[22] Resolution, *En Banc* docket, pp. 1068-1069.
[23] Resolution, *En Banc* docket, pp. 1166-1169.

before it[24] granting petitioner's Motion for Reconsideration of the Decision dated July 15, 2015 and declaring the *Petition for Review* filed with the Court in Division docketed as CTA Case No. 8544 to be within the jurisdiction of the Court. The Supreme Court further directed Court in Division to resolve the case with dispatch. The dispositive portion of the Resolution is hereby quoted for ready reference:

> **WHEREFORE**, the motion for reconsideration is **GRANTED**. Respondent Petron Corporation's petition for review docketed as CTA Case No. 8544 is hereby **DECLARED** to be within the jurisdiction of the Court of Tax Appeals, which is **DIRECTED** to resolve the case with dispatch.
>
> **SO ORDERED**.

The Supreme Court has spoken on the present controversy. And this Court needs only to comply.

It must be emphasized that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[25] Thus, the Court *En Banc* cannot rule on the matter in any other way.

WHEREFORE, petitioner's *Petition for Review* is hereby **GRANTED**. Accordingly, the case is **REMANDED** to the Court in Division for disposition on the merits.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[24] G.R. No. 207843, July 15, 2015.
[25] GSIS v. Court of Appeals, 334 Phil. 163, 175 [1997], citing Ang Ping v. RTC of Manila, Br. 40, G.R. No. L-75860, 17 September 1987, 154 SCRA 77 and Tugade v. Court of Appeals, G.R. L-47772, 31 August 1978, 85 SCRA 226.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Inhibited)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice