REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PETRON CORPORATION,
Petitioner,

- versus -

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

CTA CASE NO. 8544

Members:

CASTAÑEDA, JR., Chairperson,
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUL 21 2016 10:30 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of the Court is petitioner's Motion for Reconsideration [of the Decision dated May 17, 2016] filed on June 1, 2016, with respondent's Comment Re: Petitioner's Motion for Reconsideration filed on June 20, 2016.

For easy reference, the dispositive portion of the assailed Decision reads:

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

SO ORDERED."[1]

Petitioner avers in its motion that an assessment is not necessary before the Court may rule on the propriety of CMC No. 164-2012 and the subject BIR Letter. It further asserts that it need not elevate the matter before the Secretary of Finance because the attendant circumstances warrant the immediate recourse to the Court. Finally, petitioner asserts that the Court has jurisdiction over the Supplemental Petition.

Respondent, on the other hand, avers that the Court has no jurisdiction over the subject Petitions because petitioner failed to exhaust administrative remedies, *i.e.*, it failed to elevate the matter before the Secretary of Finance.

The issues before the Court are: (1) Whether the Court has jurisdiction to entertain the Original Petition questioning the propriety of CMC No. 164-2012 and the subject BIR Letter; and (2) Whether the Court has jurisdiction over petitioner's Supplemental Petition praying for tax refund.

The Court denies the instant Motion.

The Court has no jurisdiction to entertain the Original Petition

Petitioner assails the ruling of the Court that before it can exercise its *certiorari* power over the validity of a revenue regulation or circular, it must be (1) in connection to an assessment; and (2) it must be elevated to the Secretary of Finance, whose adverse ruling is properly appealable before the Court. In other words, petitioner asserts that there is no need for a case involving an assessment for the Court to exercise its *certiorari* power and that the circumstances of this case falls within the exceptions to the rule on exhaustion of administrative remedies. *yz*

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[1] Decision, Docket, Vol. V, p. 2332.

Petitioner's assertion is misplaced.

To reiterate the plain language of the *Philam Life* case,[2] the Court pertinently quotes:

> "In the recent case of *City of Manila v. Grecia-Cuerdo*, the Court *en banc* has ruled that the CTA now has the **power of certiorari in cases within its appellate jurisdiction**. xxx
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> xxx xxx xxx
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> xxx. **Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.**"[3] *(Emphasis supplied)*

Under the above-quoted jurisprudence, the Supreme Court said that this Court has the power of *certiorari* **in cases within its appellate jurisdiction**. The Supreme Court then concludes that this Court can rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular **on which the said assessment is based**.

Simply stated, this Court can only exercise its *certiorari* power in relation to cases falling within its appellate jurisdiction, *i.e.*, validity of a revenue regulation or revenue memorandum circular on which an assessment is based. Thus, when the principal subject matter of the Petition does not fall within this Court's appellate jurisdiction, this Court is likewise stripped of its *certiorari* power.

Petitioner further states that in any event, this Court confirmed that a final assessment and demand to collect exist in the instant case.[4] This statement is grossly misleading. As clearly stated in the assailed Decision, there is no assessment in this case because an IEIRD cannot be equated to an assessment. Thus:

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[2] Id., pp. 2326-2327.
[3] Id., p. 2326.
[4] Par. 20, Motion for Reconsideration, Docket, Vol. V, p. 2342.

> "Thus, there is no assessment in this case because an IEIRD cannot be equated to an assessment. IEIRD is prepared by the taxpayer-declarant, and is an evidence of final payment of duties and taxes. An assessment on the other hand, contains not only a computation of tax liabilities due, but also a demand for payment sent to the taxpayer within a prescribed period. An assessment is vital in determining the period of limitation regarding its proper issuance and the period within which to protest it. Clearly, IEIRD is not an assessment issued by the BIR against the taxpayer."[5]

Moreover, petitioner asserts that it will suffer great and irreparable injury and that there is no other plain, speedy and adequate remedy, which warrants its direct and immediate recourse to this Court without the adverse ruling of the Secretary of Finance.

The Court is not persuaded.

The Tariff and Customs Code (TCC) is replete with remedies available to petitioner, among which are as follows:

> "SECTION 2308. Protest and Payment upon Protest in Civil Matters. — When a ruling or decision of the Collector is made whereby liability for duties, fees, or other money charge is determined, except the fixing of fines in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the Government is made, or within thirty days thereafter, a written protest setting forth his objections to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made."

> "SECTION 2309. Protest Exclusive Remedy in Protestable Case. — In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to matters correctible for manifest

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[5] See Note 1, p. 2328.

error in the manner prescribed in section one thousand seven hundred and seven hereof."

"SECTION 2313. Review by 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 days after notification in writing by the Collector of his action or decision, give written notice to the Collector of his desire to have the matter reviewed by 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."

"SECTION 2402. Review by Court of Tax 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.

Unless an appeal is made to the Court of Tax Appeals in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive."

The above-quoted provisions of the TCC, among others, show that petitioner is equipped with adequate remedies which it failed to consider before elevating the present matter before this Court. Instead of pursuing its remedies under the TCC, petitioner opted to test the waters and question directly the propriety of CMC No. 164-2012 and the subject BIR Letter. In other words, it prays that CMC No. 164-2012 and the subject BIR Letter to be declared invalid, so that it may be excused from payment of the corresponding excise taxes on its importation. The manifest objective therefore, of petitioner, is to contest the payment of excise taxes, which it should have pursued following the provisions of the TCC.

Consequently, petitioner cannot railroad the procedure through simple invocation of the *certiorari* power of this Court *vis-a-vis* CMC No. 164-2012 and the subject BIR Letter. As such, the Court sees no reason to disturb the assailed Decision.

The Court has no jurisdiction over the Supplementary Petition praying for refund

Considering that the Court still has no jurisdiction over the Original Petition, it necessarily follows that the Court cannot likewise take cognizance of the Supplementary Petition praying for refund.

Meanwhile, petitioner contends that it need not pay the requisite docket fees with regard to the Supplemental Petition. This matter was already addressed by the Court in the assailed Decision, as follows:

> "A review of the Supplemental Petition shows that it is an initiatory pleading as petitioner seeks to refund what it has paid to the BIR. In other words, the cause of action of petitioner in its Supplemental Petition is for refund, while its cause of action in the Original Petition is allegedly for assessment. Verily, these are two different initiatory pleadings as they seek different reliefs under the NIRC of 1997, as amended."[6]

To support its contention that the Supplemental Petition's cause of action is germane to, or is intertwined with the Original Petition's cause of action and is therefore, exempt from payment of the requisite docket fees, petitioner cited the cases of *Roman Catholic Archbishop of Cebu v. The Collector of Internal Revenue* and *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*.[7]

The pivotal factor in these cases, however, is that there exists a disputed assessment. Hence, upon declaration of the Court that the assessments were invalid, it was not necessary to file another action for refund and it is within the power of the Court to order refund.

In the instant case, there is no disputed assessment to speak of. There was no final assessment to dispute. Petitioner directly filed the Original Petition before this Court which merely seeks to invalidate CMC No. 164-2012 and the subject BIR Letter. There is no disputed assessment that is germane to or is intertwined with an action for refund. Hence, the Supplemental Petition is considered as

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[6] Id., p. 2331.
[7] See Note 4, pars. 52 & 53, pp. 2352-2353.

an initiatory pleading, the non-payment of corresponding docket fees of which is fatal to petitioner's claim.

Considering the foregoing, the Court is constrained to deny the instant Motion.

WHEREFORE, in view thereof, the instant Motion for Reconsideration [of the Decision dated May 17, 2016] is **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice