REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SURESTE PROPERTIES INC., *Petitioner,*

- versus -

DEPARTMENT OF FINANCE, as represented by SECRETARY BENJAMIN E. DIOKNO; DEPARTMENT OF TRADE AND INDUSTRY, as represented by SECRETARY ALFREDO E. PASCUAL; and BUREAU OF INTERNAL REVENUE, as represented by COMMISSIONER ROMEO D. LUMAGUI, JR., *Respondents.*

CTA CASE NO. SCA-0004

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, and
ANGELES, *JJ.*

Promulgated:

JAN 23 2024
4:10 p.m.

x - x

RESOLUTION

For Court action are:

1) petitioner's Formal Offer of Exhibits, filed on July 12, 2023, with respondent Bureau of Internal Revenue (BIR)'s Comment/Opposition (Re: Petitioner's Formal Offer of Exhibits), filed on July 19, 2023 and respondents Department of Finance (DOF) and Department of Trade and Industry (DTI)'s Comment [on Petitioner's Formal Offer of Exhibits on its application for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI)], posted on July 19, 2023; and

2) respondent BIR's Motion for Early Resolution, filed on July 5, 2023.[1]

Petitioner's Application for TRO and/or WPI

Petitioner prays that a TRO/WPI be issued to enjoin respondents from implementing the following tax law and issuances:[2]

1. Rule 18, Section 5 of Republic Act (RA) No. 11534, otherwise known as the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act Implementing Rules and Regulations (IRR);

2. Section 2 of Revenue Regulations (RR) No. 21-2021,[3] amending Section 4.106-5 (b) and (c) of RR 16-2005 (Consolidated VAT Regulations of 2005, as amended);

3. Section 3 of RR No. 21-2021, amending Section 4.108-5 (b) (2) and (3) of RR 16-2005 (Consolidated VAT Regulations of 2005, as amended);

4. Q2, A2, Q24 and A24 of Revenue Memorandum Circular (RMC) No. 24-2022;[4] and

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[1] Minutes of the hearing held on, and Order dated, July 5, 2023, provides:

The Court also noted the Motion for Early Resolution dated July 4, 2023, filed by respondent BIR via electronic mail on even date. Counsel for petitioner acknowledged receipt of a copy of said Motion. Noting that the arguments in said Motion were exhaustively discussed in the Petition for Certiorari, the Court deemed respondent's Motion for Early Resolution submitted for resolution.

[2] Relief, Petition for Certiorari and Prohibition dated February 21, 2023. Docket (Vol. I), pp. 58-59.

[3] Subject: Amending Certain Provisions of Revenue Regulations (RR) No. 16-2005, as Amended by RR Nos. 4-2007, 13-2018, 26-2018, and 9-2021 to implement Sections 294(E) and 295(D), Title XIII of the National Internal Revenue Code of 1997 (Tax Code), as Amended by R.A. No. 11534 (CREATE Act), and Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations.

[4] Subject: Clarifying Issues Relative to Revenue Regulations (RR) No. 21-2021 Implementing the Amendments to the Value-Added Tax (VAT) Zero Rating Provisions Under Sections 106 and 108 of the National Internal Revenue Code of 1997 (Tax Code), in Relation to Sections 294(E) and 295(D), Title XIII of the Tax Code, Introduced by Republic Act (R.A.) No. 11534 (CREATE Act), and Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations (CREATE IRR).

5. Q17 and A17 of RMC No. 49-2022,[5] amending Q17 and A17 of RMC 24-2022.

Petitioner invokes *Bicol Medical Center, et. al. v. Noe B. Botor, et. al.*[6] to prove that it satisfied the requisites for the issuance of a TRO/WPO. In particular: (1) it has a clear and unmistakable right to be protected; (2) there is a material and substantial invasion of such right by respondents; (3) there is an urgent need for the writ to prevent irreparable injury to petitioner; and, (4) no other ordinary, speedy, and adequate remedy exists that is available to petitioner.

Respondent BIR's Motion for Early Resolution

In its *Motion for Early Resolution*,[7] respondent BIR states that petitioner's non-observance of the doctrine of exhaustion of administrative remedies resulted in lack of cause of action as it failed to avail itself of an appeal on: (1) the ruling of the Commissioner of Internal Revenue (CIR) before the Secretary of Finance under Section 4 of the 1997 National Internal Revenue Code (NIRC), as amended; and (2) the denial of its request for the issuance of a Value-Added Tax (VAT)-Zero Rating Certification for 2023 by the Philippine Economic Zone Authority (PEZA)- Incentives Management Division (IMD) before its director general.

Respondent BIR further insists that the *Petition for Certiorari* and Prohibition was filed beyond the sixty (60)-day period as provided for by Section 4 of Rule 65 of the Revised Rules of Court.

Respondent BIR finally claims that the PEZA's denial of petitioner's VAT Zero-Rating Certification was done in the exercise of its quasi-legislative power. In view thereof, such denial is not the proper subject of a petition for *certiorari* and prohibition.

The Court finds respondent BIR's averments meritorious.

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5 Subject: Amending Pertinent Portion of the Questions and Answers Revenue Memorandum Circular (RMC) No. 24-2022 to Align the Provisions of CREATE Act and its Implementing Regulations (IRR).

6 G.R. No. 214073, October 4, 2017.

7 "Motion" for brevity.

Petitioner directly challenges the above tax provision and issuances before the Court when the PEZA-IMD denied its request for VAT Zero-Rating certification for the year 2023.[8] The specific prayer in its Petition for *Certiorari* and Prohibition (with Application for TRO and/or WPI)[9] seeks the declaration of its entitlement to zero-rated VAT for its local purchases of goods and services.[10] This observation is supported by the following admissions in its Petition:

> 7.03 Firm in its legal position that SPI remains to be entitled to VAT zero-rating, it applied with PEZA for the issuance of a VAT zero-rating certification for calendar year 2023. **However, this request or application was denied by the PEZA Incentives Management Division ("PEZA-IMD") in an e-mail dated 11 January 2023.**
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> ...

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8 Exhibit "P-4," Docket, pp.83-84.
The email dated January 11, 2023 of PEZA-IMD reads:

Dear Ms. Mariano,

We note that SURESTE PROPERTIES, INC. (SPI) at the Bagong Nayong Pilipino-Entertainment City Manila is an Ecozone Tourism Enterprise under Certificate of Registration No. 10-04-T dated 07 September 2010.

Under CREATE Law and its IRR (as amended) and BIR RR No. 21-2021 as clarified by BIR RMC 24-2022, the VAT zero-rating on local purchases shall apply on to goods and services that are directly and exclusively used in the registered project/operations of the registered export enterprise.

Under CREATE IRR (as amended), Export Enterprise refers to any individual, partnership, corporation, Philippine Branch of a foreign corporation, or other entity organized and existing under the Philippine laws and registered with an IPA to engage in <u>manufacturing, assembling or processing activity</u>, and resulting in the direct exportation, and/or sale, of its <u>manufactured, assembled or processed product</u> that will form part of the final export product, of at least seventy percent (70%) of its total production or output.

Based on the above matter, since the activity of SPI does not qualify under the definition of Export Enterprise under CREATE Law and its IRR, we regret to inform that SPI's request for VAT zero-rating certification for the year 2023 will not be processed.

Thank you for your understanding.

Sincerely,

Mariella T. Camacho

9 "Petition" for brevity.

10 Petition, Docket, p. 59:
RELIEF
...
(d) declare that the petitioner, an Ecozone Tourism Enterprise registered with the PEZA prior to the effectivity of the CREATE Act, continues to be entitled to zero-rated VAT on all its local purchases pf goods and services; and...

> **7.08 Despite being registered with PEZA pursuant to the PEZA Law, SPI is being denied entitlement to its VAT zero-rating incentive without factual and legal basis. SPI is therefore constrained to seek the judicial intervention of the Honorable Court via this Petition.**[11]

Sections 1, 2, and 4 of Rule 65 of the Revised Rules of Court provide:

> SECTION 1. *Petition for Certiorari.* - **When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amount to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.
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> SEC. 2. *Petition for Prohibition.* — **When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.
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> ...
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> SEC. 4. *When and where to file the petition.* - **The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution.** In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.[12]

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11 *Id.* at pp.31-33. Boldfacing supplied.
12 Boldfacing supplied.

Under Section 1, Rule 65 of the Revised Rules of Court, the following requisites must be present in order for a petition for *certiorari* to prosper: (1) the writ is directed against a tribunal, a board, or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[13] Meanwhile, in Section 2, Rule 65 of the Rules of Court, the following requisites must be established in the case of a petition for prohibition: (1) the writ is directed against a tribunal, corporation, board or person exercising functions, judicial, quasi-judicial, or ministerial (2) such tribunal, corporation, board, officer or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion; and (3) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[14]

The Supreme Court in *The Philippine American Life and General Insurance Company v. The Secretary of Finance, et al. (PHILAMGEN)*,[15] declared that it is now within the power of the CTA, through its power of *certiorari*, to rule on the validity of a particular administrative rule or regulation in the exercise of its appellate jurisdiction. In *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division), et. al.*[16] the Supreme Court echoed the ruling in *Banco De Oro, et. al. v. Republic of the Philippines, et. al. (Banco De Oro)*,[17] that the CTA has *certiorari* jurisdiction over challenges to the validity of tax issuances.

Albeit the above pronouncements, the petition should be dismissed.

Indeed, before the CTA exercises its *certiorari* and prohibition jurisdiction over cases directly challenging the constitutionality or validity of a tax law or regulations or administrative issuances (i.e., revenue orders, revenue memorandum circulars, or rulings), Section 4 of the NIRC, in relation to Section 7 (a) (1) of RA No. 1125, as

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13 Anita Santos v. Atty. Kissack B. Gabaen,, et al., G.R. No. 195638. March 22, 2022; Citations omitted.

14 *Ibid.*

15 G.R. No. 210987, November 24, 2014.

16 G.R. Nos. 210501, 211294 and 212490, March 15, 2021.

17 G.R. No. 198756, August 16, 2016.

amended by RA No. 9282 must be strictly observed. Petitioner failed in this regard.

Section 4 of the NIRC, as amended, confers upon the CIR quasi-judicial powers to interpret tax laws, subject to review by the Secretary of Finance, thus:

> Sec. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
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> ....

In PHILAMGEN, the Supreme Court discussed the procedure outlined in Section 4 of the NIRC, as amended. To stress, the CIR, in the exercise of its power under the first paragraph of Section 4 of the NIRC, as amended, interpreted a tax law and issued BIR Ruling No. 015-12 finding The Philippine American Life and General Insurance Company's sale of shares is a taxable donation under Section 100 of the NIRC. Aggrieved, the Philippine American Life and General Insurance Company requested the Secretary of Finance to review BIR Ruling No. 015-12. It was ruled that a taxpayer prejudiced by an adverse ruling of the Secretary of Finance in the exercise of its power of review under Section 4 of the NIRC, as amended, shall seek immediate recourse with the Court of Tax Appeals (CTA).

On the other hand, the Supreme Court in *Banco De Oro* further declared that the determination of the validity of these tax laws and issuances clearly falls within the exclusive appellate jurisdiction of the CTA under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424, as follows:

> ...
> The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.

...

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. **Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.**[18]

Most recently in *Oceanagold (Philippines), Inc. v. Commissioner of Interanal Revenue,*[19] the Supreme Court emphasized that under Section 4 of the NIRC, as amended, the CIR's power to interpret tax laws, which come in the form of various kinds of revenue issuances is subject to review by the Secretary of Finance.

However, the records[20] of the case, and petitioner's admissions reveal that it did not challenge the foregoing tax law and issuances, firstly, before the CIR. Absent the CIR's interpretation, there is nothing for the Secretary of Finance to review under Section 4 of the

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18 Boldfacing supplied.
19 G.R. No. 234614, June 14, 2023.
20 Paragraph 3.21, Petition, Docket, p.12.

3.21 Under the circumstances, only a direct recourse to the Honorable Court, a highly specialized body that is tasked to resolve all legal problems and which has the power to issue an injunctive writ, can put an immediate and final stop to the unlawful acts of the respondents.

NIRC. Consequently, there is also nothing for this Court to consider. Petitioner's witness Arcan Lat testified:

Atty. Gonzales:	Okay. You identified in your Judicial Affidavit a denial for the VAT zero rating by the PEZA thru an email. **Did you make an appeal before the PEZA, DOF or DTI or even request for a BIR ruling or opinion to clarify if petitioner is indeed entitled to the VAT- Zero Rating privilege?**
Witness:	We did not file for reconsideration for that the basis, if I may add, the basis for us to honor that email is that that email was shown to me by my team who directly communicated with PEZA and the response from PEZA was shown to me.
Atty. Gonzales:	So after you have received the denial email from PEZA no more administrative action was made on your end?
Witness:	**No.**[21]

It must be underscored as well that petitioner assailed the validity of the foregoing tax law and issuances, only when its request for VAT Zero-Rating certification for the year 2023 was denied. Petitioner, too, did not move for the reconsideration of such denial with the director general of PEZA.

Section 14 of Republic Act (R.A.) No. 7916[22] confirmed that the PEZA Director General has the power to acquire jurisdiction over the protests, complaints, and claims of the residents and enterprises in the ECOZONE:

> SEC. 14. *Powers and Functions of the Director General.* - The director general shall be the overall coordinator of the policies, plans and programs of the ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. He shall determine the structure and the staffing pattern and personnel complement of the PEZA and establish regional offices, when necessary, subject to the approval of the PEZA Board.

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21 Transcript of Stenographic Notes (TSN), Hearing held on July 5, 2023, p. 16.

22 An Act Providing for the Legal Framework and Mechanisms for the Creation, Operaton, Administration, And Coordination of Special Economic Zones In The Philippines, Creating For This Purpose, The Philippine Economic Zone Authority (PEZA), And For Other Purposes, February 21, 1995.

> In addition, he shall have the following specific powers and responsibilities:
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> ...
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> **(g) To acquire jurisdiction, as he may deem proper, over the protests, complaints, and claims of the residents and enterprises in the ECOZONE concerning administrative matters;**
>
> ...

In addition, the Court is devoid of jurisdiction to declare petitioner entitled to the issuance of a VAT Zero-Rating certification, the same being an action that clearly falls within the jurisdiction of the director general of PEZA. The CTA is a court of special jurisdiction; as such, it can take cognizance only of such matters as are clearly within its jurisdiction.[23]

Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines,[24] declared that under the doctrine of primary administrative jurisdiction, where the law confines in an administrative body the power to determine a particular issue, the administrative body's jurisdiction will prevail over the court's. This means that courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal.

In fine, the review of the Secretary of Finance from an adverse ruling by the CIR shows that there has been another remedy available to petitioner which it did not properly avail itself of.

WHEREFORE, respondent BIR's **Motion for Early Resolution** is **GRANTED.**

The **Petition for Certiorari and Prohibition along with petitioner's** application for the issuance of TRO and/or WPI are **DENIED**. Consequently, the resolution of petitioner's **Formal Offer of Exhibits** in relation to its **Application for Temporary Restraining**

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[23] See *Commissioner of Internal Revenue, v. Court of Tax Appeals Third Division and Citysuper, Incorporated*, G.R. No. 239464, May 10, 2021, citing *Commissioner of Internal Revenue v. Villa*, G.R. No. L-23988, January 2, 1968.

[24] G.R. No. 226592, July 27, 2021; Citations omitted.

Order and/or Writ of Preliminary Injunction has been rendered **MOOT**.

SO ORDERED.

Catherine T. Manahan Marian Ivy F. Reyes-Fajardo

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice